

THE GENERAL STATUTES OF NORTH CAROLINA

1965 CUMULATIVE SUPPLEMENT

Completely Annotated, under the Supervision of the Department
of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
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Volume 3A

Place in Pocket of Corresponding 1960 Replacement Volume of
Main Set and Discard Previous Supplement

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THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.
1965

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Preface

This Cumulative Supplement to Replacement Volume 3A contains the general laws of a permanent nature enacted at the 1961, 1963 and 1965 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein prior to 1961 appears in Replacement Volumes 4B and 4C. The Cumulative Supplements to such volumes contain an index to statutes codified as a result of the 1961, 1963 and 1965 legislative sessions.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1961, 1963 and 1965 Sessions of the General Assembly affecting Chapters 106 through 116 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 250 (p. 378)-265 (p. 217).
Federal Reporter 2nd Series volumes 265 (p. 657)-347 (p. 320).
Federal Supplement volumes 172 (p. 273)-242 (p. 512).
United States Reports volumes 359 (p. 344)-381 (p. 531).
Supreme Court Reporter volumes 79 (p. 944)-85.
North Carolina Law Review volumes 37 (p. 233)-43 (p. 665).

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The General Statutes of North Carolina 1965 Cumulative Supplement

VOLUME 3A

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Cited in *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

Part 1A. Collection and Refund of Fees and Taxes.

§ 106-9.2. Records and reports required of persons paying fees or taxes to Commissioner or Department; examination of records; determination of amount due by Commissioner in case of noncompliance.—

(a) Every person paying fees or taxes to the Commissioner of Agriculture or to the Department of Agriculture under the provisions of this chapter shall keep such records as the Commissioner may prescribe to indicate accurately the fees or taxes due to the Commissioner or Department, and such records shall be preserved for a period of three (3) years, and shall at all times during the business hours of the day be subject to inspection by the Commissioner or his deputies or such other agents as may be duly authorized by the Commissioner. Any person

failing to comply with or violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court.

(b) It shall be the duty of the Commissioner of Agriculture, by competent auditors, to have the books and records of every person paying fees or taxes to the Commissioner or Department examined at least once each year to determine if such persons are keeping complete records as provided by this section, and to determine if correct reports have been made to the Commissioner or Department covering the total amount of fees or taxes due by such persons.

(c) If any person shall fail, neglect or refuse to keep such records or to make such reports or pay fees or taxes due as required, and within the time provided in this chapter, the Commissioner shall immediately inform himself as best he may as to the matters and things required to be set forth in such records and reports, and from such information as he may be able to obtain determine and fix the amount of fees or taxes due the State from such delinquent person for the period covering the delinquency. The Commissioner shall proceed immediately to collect the fees or taxes due the State, including any penalties and interest thereon, in the manner provided in this article. (1963, c. 458.)

§ 106-9.3. Procedure for assessment of fees and taxes.—(a) If the Commissioner of Agriculture discovers from the examination of any report filed by a taxpayer or otherwise that any fee or tax or additional fee or tax is due from any taxpayer, he shall give notice to the taxpayer in writing of the kind and amount of fee or tax which is due and of his intent to assess the same, which notice shall contain advice to the effect that unless application for a rehearing is made within the time specified in subsection (c), the proposed assessment will become conclusive and final.

If the Commissioner is unable to obtain from the taxpayer adequate and reliable information upon which to base such assessment, the assessment may be made upon the basis of the best information available and, subject to the provisions hereinafter made, such assessment shall be deemed correct.

(b) The notice required to be given in subsection (a) may be delivered to the taxpayer by an agent of the Commissioner or may be sent by mail to the last known address of the taxpayer and such notice will be deemed to have been received in due course of the mail unless the taxpayer shall make an affidavit to the contrary within ninety (90) days after such notice is mailed, in which event the taxpayer shall be heard by the Commissioner in all respects as if he had made timely application.

(c) Any taxpayer who objects to a proposed assessment of fee or tax or additional fee or tax shall be entitled to a hearing before the Commissioner of Agriculture, provided application therefor is made in writing within thirty (30) days after the mailing or delivery of the notice required by subsection (a). If application for a hearing is made in due time, the Commissioner of Agriculture shall set a time and place for the hearing and after considering the taxpayer's objections shall give written notice of his decision to the taxpayer. The amount of fee or tax or additional fee or tax due from the taxpayer as finally determined by the Commissioner shall thereupon be assessed and upon assessment shall become immediately due and collectible.

Provided, the taxpayer may request the Commissioner at any time within thirty (30) days of notice of such proposed assessment for a written statement, or transcript, of the information and the evidence upon which the proposed assessment is based, and the Commissioner of Agriculture shall furnish such statement, or transcript, to the taxpayer. Provided, further, after request by the taxpayer for such written statement, or transcript, the taxpayer shall have thirty (30) days after the receipt of the same from the Commissioner of Agriculture to apply in writing for such hearing, explaining in detail his objections to such proposed assess-

ment. If no request for such hearing is so made, such proposed assessment shall be final and conclusive.

(d) If no timely application for a hearing is made within thirty (30) days after notice of a proposed assessment of fee or tax or additional fee or tax is given pursuant to subsection (a), such proposed fee or tax or additional fee or tax assessment shall become final without further notice and shall be immediately due and collectible.

(e) Where a proper report has been filed by a taxpayer and in the absence of fraud, the Commissioner of Agriculture shall assess any fee or tax or additional fee or tax due from the taxpayer within three (3) years after the date upon which such report is filed or within three (3) years after the date upon which such report was required by law to be filed, whichever is the later. If no report has been filed, and in the absence of fraud, any fee or tax or additional fee or tax due from a taxpayer may be assessed at any time within five (5) years after the date upon which such report was required by law to be filed. In the event a false and fraudulent report has been filed or there has been an attempt in any manner to fraudulently defeat or evade a fee or tax, any fee or tax or additional fee or tax due from the taxpayer may be assessed at any time.

(f) Except as hereinafter provided in subsection (g), the Commissioner of Agriculture shall have no authority to assess any fee or tax or additional fee or tax under this section until the notice required by subsection (a) shall have been given and the period within which an application for a hearing may be filed has expired, or if a timely application for a hearing is filed, until written notice of the Commissioner's decision has been given to the taxpayer, provided, however, that if the notice required by subsection (a) shall be mailed or delivered within the limitation prescribed in subsection (e), such limitation shall be deemed to have been complied with and the proceeding may be carried forward to its conclusion.

(g) Notwithstanding any other provision of this section, the Commissioner of agriculture shall have authority at any time within the applicable period of limitations to proceed at once to assess any fee or tax or additional fee or tax which he finds is due from a taxpayer if, in his opinion, the collection of such fee or tax is in jeopardy and immediate assessment is necessary in order to protect the interest of the State, provided, however, that if an assessment is made pursuant to the authority set forth in this subsection before the notice required by subsection (a) is given, such assessment shall not be valid unless the notice required by subsection (a) shall be given within thirty (30) days after the date of such assessment.

(h) All assessments of fees or taxes or additional fees or taxes (exclusive of penalties assessed thereon) shall bear interest at the rate of one-half of one percent (0.5%) per month or fraction thereof from the time said fees or taxes or additional fees or taxes were due to have been paid until paid. (1963. c. 458.)

§ 106-9.4. Collection of delinquent fees and taxes.—(a) If any fee or tax imposed by this chapter, or any other fee or tax levied by the State and payable to the Commissioner of Agriculture or the Department of Agriculture, or any portion of such fee or tax, be not paid within thirty (30) days after the same becomes due and payable, and after the same has been assessed, the Commissioner of Agriculture shall issue an order under his hand and official seal, directed to the sheriff of any county of the State commanding him to levy upon and sell the real and personal property of the taxpayer found within his county for the payment of the amount thereof, with the added penalties, additional taxes, interest, and cost of executing the same, and to return to the Commissioner of Agriculture the money collected by virtue thereof within a time to be therein specified, not less than sixty (60) days from the date of the order. The said sheriff shall, thereupon, proceed upon the same in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property

upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the order, to be collected in the same manner.

(b) Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this chapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this chapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the setoff of any matured or unmatured indebtedness of the taxpayer to the garnishee. To effect such attachment or garnishment the Commissioner of Agriculture shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Commissioner of Agriculture or by any officer having authority to serve summonses. Said notice shall show:

- (1) The name of the taxpayer and his address, if known;
- (2) The nature and amount of the fee or tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and
- (3) Shall be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no setoff against the taxpayer, he shall, within ten (10) days after service of said notice, answer the same by sending to the Commissioner of Agriculture by registered mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Commissioner with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Commissioner upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within ten (10) days after service of said notice, shall send two (2) copies of said statement to the Commissioner by registered mail; if the Commissioner admits such defense or setoff, he shall so advise the garnishee in writing within ten (10) days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or garnished hereunder which is not affected by such defense or setoff shall be remitted to the Commissioner as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Commissioner shall not admit the defense or setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within ten (10) days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Commissioner of Agriculture by default or after hearing, the garnishee shall become liable for the fee or taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten per cent (10%) of

any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Commissioner of Agriculture or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said fees or taxes, interest, and penalties shall be those provided in this article, as now or hereinafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Commissioner, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by the General Statutes in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Commissioner at any time within twelve (12) months after said intangible is paid to him and if the Commissioner finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by § 105-407 and if such payment is denied, said party may appeal from the determination of the Commissioner to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said fees or taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Commissioner is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied: Provided, however, that no salary or wage at the rate of less than two hundred dollars (\$200.00) per month, whether paid weekly or monthly, shall be attached or garnished under the provisions of this section.

(c) In addition to the remedy herein provided, the Commissioner of Agriculture is authorized and empowered to make a certificate setting forth the essential particulars relating to the said fee or tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable therewith, and the nature of the fee or tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the delinquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the said certificate and index the same on the cross index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the superior court; said tax shall become a lien on realty only from the date of the docketing of such certificate in the office of the clerk of the superior court and in personalty only from the date of the levy on such personalty and upon execution thereon no homestead or personal property exemption shall be allowed.

(d) The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said fees and taxes. (1963, c. 458.)

§ 106-9.5. Refund of overpayment.—If the Commissioner of Agriculture discovers from the examination of any report, or otherwise, that any taxpayer has overpaid the correct amount of any fee or tax (including penalties, interest and costs, if any), such overpayment shall be refunded to the taxpayer within sixty

(60) days after it is ascertained together with interest thereon at the rate of six per cent (6%) per annum: Provided, that interest on any such refund shall be computed from a date ninety (90) days after date tax was originally paid by the taxpayer. Provided, further, that demand for such refund is made by the taxpayer within three (3) years from the date of such overpayment or the due date of the report, whichever is later. (1963, c. 458.)

§ 106-9.6. Suits to prevent collection prohibited; payment under protest and recovery of fee or tax so paid.—No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any fee or tax imposed in this chapter. Whenever a person shall have a valid defense to the enforcement of the collection of a fee or tax assessed or charged against him or his property, such person shall pay such fee or tax to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have in the premises, and he may, at any time within thirty (30) days after such payment, demand the same in writing from the Commissioner of Agriculture; and if the same shall not be refunded within ninety (90) days thereafter, may sue such official in the courts of the State for the amount so demanded. Such suit must be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides. (1963, c. 458.)

Part 2. Commissioner of Agriculture.

§ 106-11. Salary of Commissioner of Agriculture.—The salary of the Commissioner of Agriculture shall be eighteen thousand dollars (\$18,000.00) a year, payable monthly. (1901, c. 479, s. 4; 1905, c. 529; Rev., s. 2749; 1907, c. 887, s. 1; 1913, c. 58; C. S., s. 3872; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 338; 1943, c. 499, s. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 4.)

Editor's Note.—

1963, increased the salary from \$12,000.00
The 1963 amendment, effective July 1, to \$18,000.00.

ARTICLE 2.

North Carolina Fertilizer Law of 1947.

§ 106-50.3. Definitions.

- (5) The term "fertilizer material" means any substance containing nitrogen, phosphoric acid, potash, or any other recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers. Not included in this definition are all types of unmanipulated animal and vegetable manures and mulches for which no plant food content is claimed.
- (18) The term "mulch" means substances composed primarily of plant remains or mixtures of such substances to which no plant food has been added and for which no plant food is claimed.
- (19) The term "fortified mulch" means substances composed primarily of plant remains or mixtures of such substances to which plant food has been added and for which plant food is claimed.

In "fortified mulches" the minimum percentages of total nitrogen, available phosphoric acid, and soluble or available potash are to be guaranteed and the guarantee stated in multiples of quarter (.25) percentages; provided, however that such percentages shall not exceed one per cent respectively subject to the same limits and toler-

ances set forth in this chapter. (1947, c. 1086, s. 3; 1951, c. 1026, ss. 1, 2; 1955, c. 354, s. 1; 1959, c. 706, ss. 1, 2; 1961, c. 66, ss. 1, 2.)

Editor's Note.— subdivisions (18) and (19). As the rest of the section was not affected by the amendment it is not set out.

§ 106-50.4. **Registration of brands and licensing of manufacturers and contractors.**—(a) Each brand of commercial fertilizer, manipulated manure and fortified mulch shall be registered before being offered for sale, sold, or distributed in this State. The application for registration shall be submitted in duplicate to the Commissioner on forms furnished by the Commissioner, and shall be accompanied by a remittance of \$2.00 per brand and grade as a registration fee. Upon approval by the Commissioner a copy of the registration shall be furnished to the applicant. All registrations expire on July 1st of each year. The application shall include the following information:

- (1) The name and address of the person guaranteeing registration.
- (2) The brand.
- (3) The grade.
- (4) The guaranteed analysis showing the minimum percentage of plant food in the following order and form; provided that the Commissioner of Agriculture may vary this order and form for small packages of twenty-five (25) pounds and less:

- a. In mixed fertilizers (other than those branded for tobacco):
 - Total nitrogen — per cent
 - (Optional) water insoluble nitrogen — per cent
 - percentage of total in multiples of five.
 - Available phosphoric acid — per cent
 - Soluble or available potash — per cent
 - Whether the fertilizer is acid-forming or nonacid-forming. The potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five per cent (or one hundred pounds per ton) only.

- b. In mixed fertilizer (branded for tobacco):

Field Fertilizer

- Total nitrogen — per cent
- (Optional) nitrogen in the form of nitrate — per cent
- percentage of total in multiples of five.
- Water insoluble nitrogen — per cent
- percentage of total in multiples of five.
- Available phosphoric acid — per cent
- Soluble or available potash — per cent
- Maximum chlorine — per cent
- Total magnesium oxide — per cent

Plant Bed Fertilizer

- Total nitrogen — per cent
- (Optional) nitrogen in the form of nitrate — per cent
- percentage of total in multiples of five.
- (Optional) water insoluble nitrogen — per cent
- percentage of total in multiples of five.
- Available phosphoric acid — per cent
- Soluble or available potash — per cent
- Maximum chlorine — per cent
- Total magnesium oxide — per cent

All fertilizer branded for tobacco must contain magnesium equivalent to a minimum of two per cent magnesium oxide for field fertilizer, and one per cent magnesium oxide for plant

bed fertilizer. Whether the fertilizer is acid-forming or non-acid-forming.

The potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five per cent (or one hundred pounds per ton) only.

c. In fertilizer materials (if claimed):

Total nitrogen — per cent
 Available phosphoric acid — per cent
 In the case of bone, tankage, and other organic phosphate materials on which the chemist makes no determination of available phosphoric acid, the total phosphoric acid shall be guaranteed: Provided, that unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid and the degree of fineness.
 Soluble or available potash — per cent
 Other recognized plant food — per cent

d. In manipulated manures:

Total nitrogen — per cent
 Available phosphoric acid — per cent
 Soluble or available potash — per cent
 (The manures from which nitrogen, phosphoric acid, and potash are derived.)

e. In fortified mulches:

Total nitrogen — per cent
 Available phosphoric acid — per cent
 Soluble or available potash — per cent
 (Material or materials of which the mulch is composed.)

- (5) The sources from which the nitrogen, phosphoric acid, and potash are derived.
- (6) Magnesium (Mg) or magnesium oxide (MgO), calcium (Ca) or calcium oxide (CaO), and sulfur (S) may be claimed as secondary plant foods in all mixed fertilizers, but when one or more of these is so claimed the minimum percentage of total magnesium (Mg) or total magnesium oxide (MgO), total calcium (Ca) or total calcium oxide (CaO), and total sulfur (S), as applicable, shall be guaranteed; excepting that the sulfur guarantee for fertilizers branded for tobacco shall be both the maximum and the minimum percentages.
- (7) Borax may be claimed as an ingredient of mixed fertilizers. If claimed, it shall be guaranteed in terms of pounds of borax ($\text{Na}_2\text{B}_4\text{O}_7 \cdot 10\text{H}_2\text{O}$) per 100 pounds of fertilizer and in increments of $\frac{1}{4}$, $\frac{1}{2}$, and multiples of $\frac{1}{2}$ pound per 100 pounds of fertilizer. The guarantee will be considered both a minimum and a maximum guarantee. The analysis guarantee shall be on a separate tag as prescribed by the Commissioner.
- (8) Additional plant food elements, compounds, or classes of compounds, determinable by chemical control methods, may be guaranteed only by permission of the Commissioner by and with the advice of the director of the experiment station. When any such additional plant food elements, compounds, or classes of compounds are included in the guarantee, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the Commissioner. The Commissioner shall also fix penalties for failure to fulfill such guarantees.
- (9) In no case, except in the case of unacidulated mineral phosphates and/or basic slag unmixed with other materials shall both the terms total

phosphoric acid and available phosphoric acid be used in the same statement of analysis.

(1961, c. 66, ss. 3, 4.)

Editor's Note.—

The 1961 amendment changed subsection (a) by substituting a comma for "and" in line one, and inserting in line two the words "and fortified mulch." The amendment also

inserted a new alphabetical subdivision immediately following subsection (a) (4) d and designated as (a) (4) e. As only subsection (a) was affected by the amendment the rest of the section is not set out.

ARTICLE 4.

Insecticides and Fungicides.

§ 106-61. Adulterated and misbranded articles; injunction.

Editor's Note.—

The above catchline has been reprinted to correct an error.

ARTICLE 9.

Commercial Feeding Stuffs.

§ 106-93. Purpose of article.—The purpose of this article is to protect a farmer-buyer from the manufacturer-seller of concentrated, commercial feeds who might sell substandard or mislabeled feed stuff, and not to protect from himself a farmer who mixes his own feed. (1965, c. 799, s. 1.)

Editor's Note. — Former § 106-93 has been redesignated as § 106-93.1 by the act inserting the present section.

§ 106-93.1. Packages to be marked with statement of specified particulars; methods of analysis. — Every lot or parcel of concentrated commercial feeding stuff sold, offered or exposed for sale or distributed within this State shall have affixed thereto or printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying the weight of the package; the name, brand, or trademark under which the article is sold; the name and address of the manufacturer, jobber, or importer; the names of each and all ingredients of which the article is composed; a guarantee that the contents are pure and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein: Provided, that minerals and other materials not valuable for their protein and fat content shall be labeled in accordance with rules and regulations promulgated by the State Board of Agriculture. The methods of analysis shall be those adopted as official by the Board of Agriculture and shall conform to sound laboratory practices as evidenced by methods prescribed by the Association of Official Agricultural Chemists of the United States. In the absence of methods prescribed by the Board, the Commissioner shall prescribe the methods of analysis. (1909, c. 149, s. 1; C. S., s. 4724; 1949, c. 638, s. 1; 1953, c. 698, s. 3; 1955, c. 868, s. 1; 1965, c. 799, s. 2.)

Editor's Note. — Prior to the 1965 amendment this section was designated as § 106-93. The 1965 amendment also inserted "or distributed" near the beginning of this section.

§ 106-94. Weight of packages. — All concentrated commercial feeding stuffs, except that in bags or packages of five pounds or less, shall be in such standard weight bags or packages as the Board of Agriculture by regulation shall prescribe. (1909, c. 149, s. 1; C. S., s. 4725; 1943, c. 225, s. 1; 1953, c. 1113; 1963, c. 1089, s. 1.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, rewrote this section.

Stated in State ex rel. Graham v. Nash Johnson & Sons' Farms, 263 N.C. 66, 138 S.E.2d 773 (1964).

§ 106-95. "Commercial feeding stuffs" defined.

Quoted in State ex rel. Graham v. Nash
Johnson & Sons' Farms, 263 N.C. 66, 138
S.E.2d 773 (1964).

§ 106-95.1. Customer formula feed.—A "customer formula feed" is a feed, each batch of which is mixed according to the formula of the customer, furnished in writing over the signature of the customer or his designated agent, not to be stocked or displayed in sales areas and not to be sold commercially by any person, firm or corporation in the course of his or its regular business. (1959, c. 1057, s. 1; 1965, c. 799, s. 3.)

Editor's Note. — The 1965 amendment
rewrote this section.

State ex rel. Graham v. Nash Johnson &
Sons' Farms, 263 N.C. 66, 138 S.E.2d 773
(1964).

**Former Section Exempted from In-
spection Tax Custom-Mixed Feed.**—See

§ 106-96. Copy of statement and sample filed for registration. — Each and every manufacturer, importer, jobber, agent, or seller, before selling, offering or exposing for sale or distributing in this State any concentrated commercial feeding stuff, shall, for each and every feeding stuff, file for registration with the Commissioner of Agriculture a copy of the statement required in § 106-93.1, and accompany said statement, on request, by a sealed glass jar or bottle containing at least one pound of such feeding stuff to be sold, exposed or offered for sale, which sample shall correspond within reasonable limits to the feeding stuff which it represents in the percentages of crude protein, crude fat, crude fiber, and carbohydrates which it contains. For each and every statement so filed, there shall be paid to the Commissioner of Agriculture an annual registration fee of one dollar (\$1.00), payable at the time of registration: Provided, that for each brand of commercial feeding stuff marketed in packages of five pounds or less, there shall be paid to the Commissioner of Agriculture an annual registration fee of twenty-five dollars (\$25.00): Provided, further, that manufacturers, importers, jobbers, agents, or sellers who pay the twenty-five dollars (\$25.00) registration fee prescribed by the above provision on any feeding stuff, shall not be liable for the tonnage fee, prescribed by § 106-99, on the feeding stuff on which said twenty-five dollar (\$25.00) fee is paid.

All registration fees are payable at the time of registration, and shall be payment in full of registration fees through December thirty-first of the year in which paid. All such feeds must be registered anew each year: Provided, that nothing in this section shall be construed as applying to grain or other feed materials supplied by a farmer and used in custom-mixed feed as defined in G.S. 106-95.1. (1909, c. 149, s. 3; C. S., s. 4727; 1939, c. 354, s. 2; 1943, c. 225, s. 2; 1959, c. 1057, ss. 2, 3; 1965, c. 799, s. 4.)

Editor's Note.—

The 1965 amendment inserted "or distributing" near the beginning of the first paragraph.

Custom-mixed feed is no longer defined in § 106-95.1. That section now defines customer formula feed.

The law requires concentrated, commercial feed to be registered with the Commissioner of Agriculture, and an analysis to be furnished him. State ex rel. Graham v. Nash Johnson & Sons' Farms, 263 N.C. 66, 138 S.E.2d 773 (1964).

§ 106-99. Inspection fee on commercial feeding stuffs. — Each and every manufacturer, importer, jobber, agent, seller, or distributor of any concentrated commercial feeding stuffs, as defined in this article, shall pay to the Commissioner of Agriculture an inspection fee of twelve cents (12¢) per ton for each ton of such commercial feeding stuffs sold, offered or exposed for sale or distributed in this State. This shall apply to all commercial feeding stuffs furnished, supplied or used, for the growing or feeding under contract or agreement, of live-stock, domestic animals and poultry, and shall also apply to any feeding stuffs

which are produced by the purchase of grain or other materials and the grinding and mixing of same with concentrated commercial feeding stuffs being used as a supplement or base. The requirements of this section, however, are subject to the following conditions:

- (1) If the concentrated commercial feeding stuffs, used as a supplement or a base, has already been assessed under this article and the inspection fee paid, then the amount paid shall be deducted from the gross amount of fee due on the total feeding stuffs produced.
- (2) Only concentrates and so-called mineral feeds used in manufacturing customer formula feed shall be subject to the inspection fee as provided in this article.
- (3) Whenever any concentrated commercial feeding stuff is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber, or importer keeping the same for sale shall keep on hand cards of proper size, upon which the statement required in § 106-93.1 is plainly printed; and if the feeding stuff is sold at retail in bulk, or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber, or importer shall furnish the purchaser with one of said cards upon which is or are printed the statement or statements described in this section, except that "customer formula feed" shall be labeled by invoice as follows:

The invoice, which is to accompany delivery and be supplied to the customer at the time of delivery, shall bear the following information:

- a. Name and address of the manufacturer.
- b. Name and address of the customer.
- c. Date of sale.
- d. The product name and brand, if any, and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added; unless the invoice carries a code which identifies a formula on file with the manufacturer.

If a customer formula feed contains a nonnutritive substance which is used or intended for use in the diagnosis, cure mitigation, treatment or prevention of disease or which is intended to affect the structure or any function of the animal body, the invoice shall show the amount present, directions for use, and/or warnings against misuse of the feed.

- (4) Manufacturers of registered feeds may apply for, and the Commissioner in his discretion may issue, numbered permits authorizing manufacturers of registered feeds to purchase commercial feeding stuffs, as defined in G.S. 106-95, and the responsibility for the payment of the inspection fee assessed by the provisions of this article will be assumed by the purchaser to whom such permit has been issued. The Commissioner may in his discretion, and without notice, cancel any permit issued under the provisions of this section.

The use of permits issued under the provisions of this section shall be governed by rules and regulations promulgated by the Commissioner. (1909, c. 149, s. 6; C. S., s. 4730; 1939, c. 286; 1949, c. 638, s. 3; 1953, c. 698, s. 1; 1955, c. 868, s. 2; 1959, c. 1057, ss. 4-8; 1965, c. 799, s. 5.)

Editor's Note.—

The 1965 amendment rewrote this section, which formerly provided for an inspection tax.

Fee Imposed to Finance Cost of Administering Article—See State ex rel.

Graham v. Nash Johnson & Sons' Farms, 263 N.C. 66, 138 S.E.2d 773 (1964).

Defendant is not distributing feed or furnishing feed for the growing of poultry under contract within the meaning of this section when it transfers feed from

its own mill to its own bins for use in feeding its own chickens, even though they are "growing out" on the lands of its em-

ployees. State ex rel. Graham v. Nash Johnson & Sons' Farms, 263 N.C. 66, 138 S.E.2d 773 (1964).

§ 106-99.1. **Reporting system.** — Each manufacturer, importer, jobber, firm, corporation, or person who sells or distributes concentrated commercial feeding stuffs in this State shall make application to the Commissioner of Agriculture for a permit to report the tonnage of feeding stuffs sold and shall pay to the North Carolina Department of Agriculture an inspection fee of twelve cents (12¢) per ton. The Commission of Agriculture is authorized to require each such distributor to keep such records as may be necessary to indicate accurately the tonnage of feeding stuffs sold in the State, and as are satisfactory to the Commissioner of Agriculture. Such records shall be available to the Commissioner, or his duly authorized representative, at any and all reasonable hours for the purpose of making such examination as is necessary to verify the tonnage statement and the tax paid. Each and every distributor shall report the tonnage sold monthly on forms furnished by the Commissioner. Such reports shall be made and the inspection fee shall be due and payable monthly on the tenth day of each month covering the tonnage and kind of commercial feeding stuffs sold during the preceding month. If the report is not filed and the inspection fee paid by the tenth day following the date due or if the report of tonnage be false, the Commissioner may revoke the permit, and if the inspection fee be unpaid after the fifteen-day grace period, the amount shall bear a penalty of ten per cent (10%) which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bond which may be required. In order to guarantee faithful performance with the provisions of this section each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of five hundred dollars (\$500.00) or securities acceptable to the Commissioner of a value of at least five hundred dollars (\$500.00) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance. (1909, c. 149, s. 6; C. S., s. 4730: 1939, c. 286; 1949, c. 638, s. 3; 1955, c. 868, s. 3; 1959, c. 1057, s. 9; 1963, c. 1089, s. 2; 1965, c. 799, s. 6.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, inserted the words "sells or" near the beginning of the first sentence and deleted the words "under oath and" between

"monthly" and "on forms" in the fourth sentence.

The 1965 amendment substituted "fee of twelve cents (12¢)" for "tax of twenty-five cents (25¢)" in the first sentence.

§ 106-100. **Sale without complying with article; sale of feeding stuff below grade; forfeiture; authorizing use of adulterants; release from forfeiture.**—Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribution in this State, any concentrated commercial feeding stuff, as defined above in this article, without complying with the requirements of the preceding sections of this article, or who shall sell or offer or expose for sale or distribution any concentrated commercial feeding stuff which contains substantially a smaller percentage of crude protein or crude fat or carbohydrates or a larger percentage of crude fiber than certified to be contained, or who shall adulterate any feeding stuff with foreign, mineral, or other substance or substances, such as rice chaff or hulls, peanut shells, corn cobs, oat hulls, or similar materials of little or no feeding value, or with substances injurious to the health of domestic animals, shall be guilty of a violation of this article, and the lot of feeding stuff in question shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture, and the proceeds from said sales shall be covered into the State treasury for the use

of the Department executing the provisions of this article; provided, however, the Board of Agriculture may authorize and regulate the use of some such substances in feeding stuffs to satisfy certain feeding needs determined by research findings. The Commissioner of Agriculture, however, may in his discretion release the feeding stuff so withdrawn when the requirements of the provisions of this article have been complied with, and upon payment of all costs and expenses incurred by the Department of Agriculture in any proceedings connected with such seizure and withdrawal. (1909, c. 149, s. 7; C. S., s. 4731; 1963, c. 1176.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, added the proviso at the end of the first sentence.

§ 106-102. Collection and analysis of sample. — The Commissioner of Agriculture, together with his deputies, agents, and assistants, shall have free access to all places of business, mills, buildings, carriages, cars, vessels, and packages of whatsoever kind used in the manufacture, importation, or sale of any concentrated commercial feeding stuff, and shall have power and authority to open any package containing or supposed to contain any concentrated commercial feeding stuff, and, upon tender and full payment of the selling price of said samples, to take therefrom, in the manner hereinafter prescribed, samples for analysis; and he shall annually cause to be analyzed at least one sample so taken of every concentrated commercial feeding stuff that is found, sold, or offered or exposed for sale in this State under the provisions of this article. Said sample, not less than one pound in weight, shall be taken from not less than ten bags or packages, or if there be less than ten bags or packages, then the sample shall be taken from each bag or package, if it be in bag or package form, or if such feeding stuff be in bulk, then it shall be taken from ten different places of the lot. The sample or samples taken shall be kept a reasonable length of time by the Department of Agriculture, and on demand a portion of such sample or samples shall be furnished to the manufacturer, importer, or jobber of his feeds for examination by the chemists or other experts of said manufacturer, importer, or jobber. The Department of Agriculture is hereby authorized to publish from time to time in reports or bulletins the results of the analysis of such sample or samples, together with such additional information as circumstances advise: Provided, however, that if such sample or samples as analyzed differ from the statement prescribed in § 106-93.1, then, at least thirty days before publishing the results of such analysis, written notice shall be given of such results to the manufacturer, importer, agent, or jobber of such stock, if the name and address of such manufacturer, jobber, or importer be known: Provided further, that if the analysis of any such sample differs within reasonable limits only from the statement (prescribed in § 106-93.1) appearing upon the goods, the manufacturer shall be considered as having complied with the requirements of this article. (Rev., s. 3808; 1909, c. 149, s. 9; C. S., s. 4733; 1943, c. 225, s. 4.)

Editor's Note.—

This section is set out herein to correct the cross references in the two provisos, which originally were to § 106-93.

The Commissioner is empowered to col-

lect samples of feedstuff, and analyze them to determine the contents. State ex rel. Graham v. Nash Johnson & Sons' Farms, 263 N.C. 66, 138 S.E.2d 773 (1964).

§ 106-102.1. Misbranding; penalty; payable to purchaser; value of feed; deficiencies of weight.

Stated in State ex rel. Graham v. Nash Johnson & Sons' Farms, 263 N.C. 66, 138 S.E.2d 773 (1964).

ARTICLE 12.

Food, Drugs and Cosmetics.§ 106-133. **Drugs deemed to be adulterated.**

(3) If it is not subject to the provisions of subdivision (2) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

Editor's Note.—This subdivision is reprinted to correct an error.

ARTICLE 23.

Oleomargarine.

§ 106-235: Repealed by Session Laws 1963, c. 1135.

ARTICLE 24.

Excise Tax on Certain Oleomargarines.

§ 106-239. **Tax imposed; rules and regulations; penalties; disposition of proceeds.**—There is hereby imposed an excise tax of ten cents per pound on all oleomargarine sold, offered or exposed for sale, or exchanged in the State of North Carolina, containing any fat and/or oil ingredient other than any of the following fats and/or oils: Cottonseed oil, peanut oil, corn oil, soya bean oil, oleo oil from cattle, oleo stock from cattle, oleo stearine from cattle, neutral lard from hogs, or milk fat or any other vegetable fat or oil produced in the United States of America from agricultural commodities grown or produced in the United States of America. Such excise tax shall be in the form of a revenue stamp in such denominations as will best carry out the provisions of the law. Said stamps shall be properly safeguarded as to their manufacture, preservation and distribution and shall be in the charge of the State Department of Agriculture.

The State Department of Agriculture is hereby empowered to promulgate such rules and regulations as are consistent with the provisions of this section.

Any person violating any of the provisions of this section, or any of the rules or regulations promulgated by the State Department of Agriculture for the purpose of carrying out its provisions, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00), or imprisoned in the county jail not to exceed two months, or both fined and imprisoned.

All moneys derived from the sale of revenue stamps hereunder shall be paid into the State Department of Agriculture for the enforcement of this section. (1935, c. 328; 1965, c. 697.)

Editor's Note.—The 1965 amendment added that portion of the first sentence which follows "milk fat."

ARTICLE 25.

North Carolina Egg Law.

§§ 106-245.1 to 106-245.12: Repealed by Session Laws 1965, c. 1138, s. 3, effective July 1, 1965.

ARTICLE 25A.

North Carolina Egg Law.

§ 106-245.13. **Short title; scope; rule of construction.**—This article is named and may be cited as the North Carolina Egg Law and relates to eggs sold in the State of North Carolina. Words used in the singular form in this article

shall include the plural, and vice versa as the cause may require. (1965, c. 1138, s. 1.)

Editor's Note. — The act inserting this article, effective July 1, 1965, repealed former article 25, which was also entitled "North Carolina Egg Law." Where former provisions were similar to the new provisions, the historical citations to the repealed sections have been added to the new sections.

§ 106-245.14. Definitions.—The following words, terms, and phrases shall be construed for the purpose of this article as follows:

- (1) "Authorized representative" means the Commissioner or any duly authorized agent or employee who is assigned to carry out the provisions of this article.
- (2) "Candling and grading" means selecting eggs as to their conformity to the standards of quality and size or weight class preparatory to marketing them as a specific grade and size or weight class.
- (3) "Commissioner" means the North Carolina Commissioner of Agriculture.
- (4) "Consumer" means any person who purchases eggs for his or her use or his or her own family use or consumption and not for resale.
- (5) "Container" means any box, case, basket, carton, sack, bag, or other receptacle containing eggs. "Subcontainer" means any container used within another container.
- (6) "Distributor" means any person, producer, firm or corporation offering for sale or distributing eggs in the State to a retailer, cafe, restaurant, or any other establishment offering for sale to consumers, including but not limited to institutional consumers as defined in this article. Distributors also shall include any person, producer, firm or corporation distributing eggs to his or its own retail outlets or stores but shall not include any person, firm or corporation engaged only to haul or transport eggs.
- (7) "Eggs" means product of a domesticated chicken in the shell or as further processed egg products.
- (8) "Facilities" means any room, compartment, refrigerator or vehicle used in handling eggs in any manner.
- (9) "Grades" shall mean and include specifications defining the limit of variation in quality of two or more eggs.
- (10) "Institutional consumer" means a restaurant, hotel, licensed boarding house, commercial bakery or any other institution in which eggs are prepared as food for use by its patrons, residents or patients.
- (11) "Law" means the provisions of this article and all rules and regulations issued hereunder.
- (12) "Lots" means a physical grouping of eggs or containers with eggs therein, as determined by the North Carolina Department of Agriculture.
- (13) "Marketing of eggs" or "market" means the sale, offer for sale, gift, barter, exchange, advertising, branding, marking, labeling, grading, or other preparatory operation or distribution in any manner of eggs or containers of eggs as defined in this article.
- (14) "Packer" means any person, that is engaged in grading, shell treating or packing eggs for sale to consumers, direct or through distribution outlets of stores.
- (15) "Person" means and includes any individual, producer, firm, partnership, exchange, association, trustee, receiver, corporation, or any other business organization and any member, officer, or employee thereof.
- (16) "Retailer" means any person who markets eggs to consumers.
- (17) "Size or weight class" means a classification of eggs based on weight at the rate per dozen.
- (18) "Standards for quality" means specifications of the physical characteris-

tics of any or all of the component parts or the individual egg. (1965, c. 1138, s. 1.)

§ 106-245.15. Designation of grade and class on containers required; conformity with designation; exemption.—No person shall market to consumers, institutional consumers or retailers or expose for that purpose any eggs unless there is clearly designated therewith on the container the grade and size or weight class established in accordance with the provisions of this article and such eggs shall conform to the designated grade and size or weight class, (except when sold on contract to a U. S. governmental agency): Provided, however, a producer marketing eggs of his own production shall be exempt from this section when such marketing occurs on the premises where the eggs are produced, or when sales do not exceed 60 dozen per week. (1955, c. 213, s. 7; 1965, c. 1138, s. 1.)

§ 106-245.16. Establishing standards, grades and weight classes.—The Board of Agriculture shall establish and promulgate such standards of quality, grades and weight classes for eggs to be sold or offered for sale in this State as will promote honest and fair dealings in the interest of the poultry industry and the consumer. Such standards, grades and weight classes may be altered or modified by the Board whenever it deems it necessary. (1955, c. 213, s. 9; 1965, c. 1138, s. 1.)

§ 106-245.17. Stop sale orders.—If an authorized representative of the North Carolina Department of Agriculture shall determine, after inspection, that any lot of eggs is in violation of this article, he may issue a "stop sale order" as to such lot or lots of eggs and forthwith notify the owner or custodian of such eggs. Such order shall specify the reason for its issuance. A stop sale order shall prohibit the further marketing of the eggs subject to it until such eggs are released by the State agency. (1965, c. 1138, s. 1.)

§ 106-245.18. Container labeling.—(a) Any container or subcontainer in which eggs are marketed to consumers shall bear on the outside portion of the container, but not be limited to, the following:

- (1) The applicable consumer grade provided for in this article.
- (2) The applicable size or weight class provided for in this article.
- (3) The word "eggs."
- (4) The numerical count of the contents.
- (5) The name and address of the packer or distributor. Words and numerals used to designate the grade and size shall be in clearly legible bold-faced type at least $\frac{3}{8}$ inch in height. Any person intending to reuse a container shall obscure any inappropriate labeling thereon and relabel the container in accordance with this section prior to refilling the container with eggs. In any case, the address of the packer or distributor shall be shown in letters not exceeding $\frac{3}{8}$ inch in height.

(b) The term "fresh" may only be applied to eggs conforming to the specifications for Grade A or better. No other descriptive term other than applicable grade and size may be applied. (1965, c. 1138, s. 1.)

§ 106-245.19. Invoices.—(a) Any person, except a producer marketing eggs to another person for candling and grading, when marketing eggs to a retailer, institutional consumer, or other person shall furnish to the purchaser at the time of delivery an invoice showing date of sale, name and address of the seller, name of purchaser, quantity, grade and size-weight classification.

(b) A copy of such invoice shall be kept on file by both the person selling and the purchaser at their respective places of business for a period of at least 30 days. (1955, c. 213, s. 7; 1965, c. 1138, s. 1.)

§ 106-245.20. Advertisements.—No person shall advertise eggs for sale at a given price unless the unabbreviated grade or quality and size-weight are

conspicuously designated in block letters at least half as high as the tallest letter in the word "eggs" or the tallest figure in the price, whichever is larger. (1955, c. 213, s. 7; 1965, c. 1138, s. 1.)

§ 106-245.21. **Rules and regulations.**—The North Carolina Board of Agriculture is authorized to make and amend, from time to time, such rules and regulations as may be necessary to administer and enforce the provisions of this article. Such rules and regulations shall be published and copies thereof made available to interested parties upon request therefor. (1955, c. 213, s. 8; 1965, c. 1138, s. 1.)

§ 106-245.22. **Sanitation; exemption.**—(a) Any person engaged in the marketing of or the processing of eggs for marketing shall, in addition to maintaining egg handling facilities in a manner commensurate with laws governing food establishments keep the eggs in a proper environment, in accordance with regulations promulgated by the North Carolina Board of Agriculture, to maintain quality. In addition, any container, including the packaging material therein, when used for the marketing of eggs shall be clean, unbroken and free from foreign odor. In all instances eggs shall, so far as possible and by use of all reasonable means, be protected from being soiled or dirtied by foreign matter. When cleaning is necessary a sanitary method approved by the Commissioner shall be employed.

(b) Provided, however, that producers selling eggs of their own production are exempt from this section, when marketing occurs on the premises of production as set forth in the proviso under § 106-245.15. (1965, c. 1138, s. 1.)

§ 106-245.23. **Power of Commissioner.**—The Commissioner, or his authorized agents or representatives, may enter, during the regular business hours, any establishment or facility where eggs are bought, stored, offered for sale, or processed, in order to inspect and examine eggs, egg containers, and the premises, and to examine the records of such establishments or facilities relating thereto. (1955, c. 213, s. 10; 1965, c. 1138, s. 1.)

§ 106-245.24. **Penalties for violations; enjoining violations; venue.**—(a) Any person who violates any provision of this article shall be guilty of a misdemeanor, punishable by a fine of not less than twenty-five dollars (\$25.00) and not more than two hundred dollars (\$200.00), or imprisonment for not more than 30 days, or both.

(b) In addition to the criminal penalties provided for above, the Commissioner of Agriculture may apply by equity to a court of competent jurisdiction, and such court shall have jurisdiction and for cause shown to grant temporary or permanent injunction, or both, restraining any person from violating, or continuing to violate any provisions of this article.

(c) Any proceeding for a violation of this article may be brought in the county where the violator resides, has a place of business or principal office or where the act or omission or part thereof, complained of occurred. (1955, c. 213, s. 12; 1965, c. 1138, s. 1.)

§ 106-245.25. **Warnings in lieu of criminal prosecutions.**—Nothing in this article shall be construed as requiring the Commissioner to report for criminal prosecution violations of this article whenever he believes that the public interest will be adequately served and compliance with the article obtained by a suitable written notice or warning. (1965, c. 1138, s. 1.)

§ 106-245.26. **Remedies cumulative.**—Each remedy provided in this article shall be in addition to and not exclusive of any other remedy provided for in this article. (1965, c. 1138, s. 1.)

§ 106-245.27. **Persons punishable as principals.**—(a) Whoever commits any act prohibited by any section of this article or aids, abets, induces, or procures its commission, is punishable as a principal.

(b) Whoever causes an act to be done which if directly performed by him or another would be a violation of the provisions of this article, is punishable as a principal. (1965, c. 1138, s. 1.)

§ 106-245.28. Act of agent as that of principal.—In construing and enforcing the provisions of this article, the act, omission, or failure, of any agent, officer or other person acting for or employed by an individual, association, partnership, corporation, or firm, within the scope of his employment or office shall be deemed to be the act, omission, or failure to the individual, association, partnership, corporation, or firm as well as that of the person. (1965, c. 1138, s. 1.)

ARTICLE 26.

Inspection of Ice Cream Plants, Creameries, and Cheese Factories.

§ 106-254. Inspection fees; wholesalers; retailers and cheese factories. — For the purpose of defraying the expenses incurred in the enforcement of this article, the owner, proprietor or operator of each ice cream factory where ice cream, milk shakes, milk sherbet, sherbet, water ices, mixes for frozen or semi-frozen desserts and other similar frozen or semi-frozen food products are made or stored, or any cheese factory or butter-processing plant that disposes of its products at wholesale to retail dealers for resale in this State shall pay to the Commissioner of Agriculture each year an inspection fee of twenty dollars (\$20.00). Each maker of ice cream, milk shakes, milk sherbet, sherbet, water ices and/or other similar frozen or semi-frozen food products who disposes of his product at retail only, and cheese factories, shall pay to the Commissioner of Agriculture an inspection fee of five dollars (\$5.00) each year. The inspection fee of five dollars (\$5.00) shall not apply to conventional spindle-type milk-shake mixers, but shall apply to milk-shake dispensing and vending machines, which operate on a continuous or automatic basis. (1921, c. 169, s. 9; C. S., s. 7251(i); 1933, c. 431, s. 4; 1959, c. 707 s. 4; 1961, c. 791.)

Editor's Note.—

The 1961 amendment made changes in the first sentence by inserting the words "mixes for frozen or semi-frozen desserts"

after the word ices in line three, and by changing the position of the words "in this State."

ARTICLE 28B.

Regulation of Production, Distribution, etc., of Milk and Cream.

§ 106-266.8. Powers of Commission.

- (7) To hold hearings, make and adopt rules and regulations and/or orders necessary to carry out the purposes of this article. Every rule or order of the Commission shall be filed in the office of the Commissioner and a certified copy sent to the chairman of the board in the marketing area affected by said rule or order. An order applying only to a person or persons named therein shall be served on the person or persons affected. An order, herein required to be served, shall be served by personal delivery of a certified copy, or by mailing a certified copy in a sealed envelope, by certified mail, return receipt requested, with postage prepaid, to each person affected thereby; or in the case of a corporation, to any officer or agent of the corporation upon whom legal processes may be served. The filing in the office of the Commissioner with a certified copy of any rule or order to the chairman of the board in the area affected shall constitute due and sufficient notice to all persons affected by such rule or order.
- (10) The Commission, after public hearing and investigation, may fix prices to be paid producers and/or associations of producers by distributors

in any market or markets, and may also fix different prices for different grades or classes of milk. Whenever the Commission, after a public hearing and investigation, finds as a fact that an impending marketing situation threatens to disrupt or demoralize the milk industry in any milk-marketing area or areas, it may establish such minimum prices at which milk may be sold in the said area or areas, as it may deem to be necessary to prevent the disruption of such market or markets; and when the Commission finds that such threat no longer exists it shall withdraw such order or orders: Provided, that this authority shall not apply to the resale of milk when it is purchased for consumption on the premises. In exercising this authority, the Commission may take into consideration the type of container in which the milk is marketed. In determining the reasonableness of prices to be paid or charged in any market or markets for any grade, quantity, or class of milk the Commission shall be guided by the cost of production and distribution, including compliance with all sanitary regulations in force in such market or markets, necessary operating, processing, storage and delivery charges, the prices of other foods and other commodities, and the welfare of the general public. Prices to be paid producers and/or associations of producers by distributors in any market or markets fixed under the authority of this subdivision shall not become effective until the distributors, and producer associations affected thereby are notified in writing by certified or registered mail and until the expiration of thirty (30) days after the mailing of said notices. When a distributor handles or processes milk within the State of North Carolina, the subsequent resale of the milk outside the State shall not affect the right of the Commission to establish and enforce the minimum price to be paid to producers for such milk. In establishing producer prices for milk moving into other states, the Commission shall take into consideration prevailing producer prices established by state or federal milk control agencies operating in such other states.

- (11) The Commission may require all distributors in any market designated by the Commission to be licensed by the Commission for the purpose of carrying out the provisions of this article. One who purchases milk from a licensed distributor for the purpose of retail sales shall not be required to be licensed hereunder. The Commission may decline to grant a license, or may suspend or revoke a license already granted upon due notice and after a hearing whenever said applicant or licensee shall have violated or failed to comply with the requirements of this article 28B, or upon any of the following grounds:

- a. Where the distributor has failed to account and make payment for any milk purchased or received on consignment or otherwise from a producer or association of producers, or has, if a subdistributor, failed to account and make payment for any milk purchased or received on consignment or otherwise from a distributor: provided, however, that if it be shown there was reasonable cause for any such failure to account and make payment, and that such accounting and payment can and will be made promptly, the Commission shall not suspend or revoke a license solely for such failure until a reasonable opportunity has been afforded to make such accounting and payment.
- b. Where the applicant or distributor has made a general assignment for the benefit of creditors, or has been adjudged a bankrupt, or there has been entered against him a judgment upon which an execution remains wholly or partly unsatisfied, or where it is shown that the applicant or distributor has insuffi-

cient financial responsibility, personnel or equipment properly to conduct the milk business.

- c. Where the applicant or distributor has engaged in a course of action such as to satisfy the Commission of an intent on his part to deceive or defraud customers, producers or consumers.
- d. Where the applicant or distributor has failed to maintain such records as are required by the rules and regulations of the Commission or has failed to furnish the statements or information required by the Commission under this article 28B or has kept false records or furnished false statements with respect to such information.
- e. Where the applicant or distributor has rejected, without reasonable cause, any milk purchased from a producer, or has refused to accept, without either reasonable cause or reasonable advance notice, milk delivered by or on behalf of a producer in ordinary continuance of a previous course of dealing, except when the contract has been lawfully terminated.

In any case where the Commission shall suspend a license, the Commission may, in its discretion, accept from the licensee an offer in compromise of not less than fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000.00) as a penalty in lieu of such suspension, and thereupon rescind the suspension. All receipts from such penalties shall be paid by the Commission to the State Treasurer for disposition in the same manner as assessments, as provided by G. S. 106-266.12. The Commission may classify licenses, and may issue licenses to distributors to process or store or sell milk to a particular city or village or to a market or markets within the State of North Carolina.

(1963, c. 797, ss. 1-3; 1965, c. 936, s. 1.)

Editor's Note.—

The 1963 amendment substituted "certified mail" for "registered mail" near the middle of subdivision (7), added the fifth sentence of subdivision (10) and rewrote subdivision (11).

The 1965 amendment added the last two sentences in subdivision (10).

As the rest of the section was not affected by the amendments, it is not set out.

§ 106-266.9. Distributors to be licensed; prices and practices of distributors regulated.—No distributor in a market in which the provisions of this article are in effect shall buy milk from producers, or others, for sale within the State, or sell or distribute milk within the State, unless such distributor is duly licensed under the provisions of this article. It shall be unlawful for a distributor to buy from or sell milk to a distributor who is not licensed as required by this article. It shall be unlawful for any distributor to deal in, or handle milk if such distributor has reason to believe that the milk has been previously dealt in, or handled, in violation of the terms and provisions of this article. No distributor shall violate the prices as established by or filed with the Commission or offer any discounts or rebates without authority from the Commission; and the Commission may prohibit such practices as it may deem to be contrary to the welfare of the public and the dairy industry, such as the use of special prices or special inducements in any form or any unfair trade practices in order to vary from the established prices. The Commission may require each distributor to file with the Commission one complete schedule of his wholesale and retail prices for each marketing area and may require each distributor to charge his posted prices for all sales and to give ten days' notice by certified mail to the Commission and every licensed distributor in each marketing area affected prior to the effective date of any changes in said posted prices. The requirements as to filing price schedules shall not apply to retail stores the principal business of which is selling other than dairy products and which do not maintain or control directly or indirectly a milk

processing plant. The Commission may prohibit a distributor from selling or offering for sale milk in any market or county at prices less than the prices filed for the market or county in which such distributor's processing or bottling plant is located, except in such cases as such sales may be made at a lower price or prices in good faith to meet competition. (1953, c. 1338, s. 4; 1955, c. 406, s. 4; 1963, c. 797, ss. 2, 4, 4½.)

Editor's Note.—

The 1963 amendment inserted the words "or filed with" near the beginning of the fourth sentence, substituted "certified mail" for "registered mail" in the fifth

sentence and added at the end of the sixth sentence the words "and which do not maintain or control directly or indirectly a milk processing plant."

§ 106-266.12. Milk Commission Account; deductions by distributor from funds owed to producer.

Cited in *Carolina Milk Producers Cooperative, Inc. v. Melville Dairy, Inc.*, 255 N. C. 1, 120 S. E. (2d) 548 (1961).

§ 106-266.15. Injunctive relief.

Stated in *State ex rel. North Carolina Milk Comm'n v. Dagenhardt*, 261 N.C. 281, 134 S.E.2d 361 (1964).

§ 106-266.16. Penalties.

Stated in *State ex rel. North Carolina Milk Comm'n v. Dagenhardt*, 261 N.C. 281, 134 S.E.2d 361 (1964).

§ 106-266.21. Sale below cost to injure or destroy competition prohibited.—The sale of milk by any distributor or producer-distributor or retailer below cost for the purpose of injuring, harassing or destroying competition is hereby prohibited. At any hearing or trial on a complaint under this section, evidence of sale of milk by a distributor or sub-distributor or retailer below cost shall constitute prima facie evidence of the violation or violations alleged, and the burden of rebutting the prima facie case thus made, by showing that the same was justified in that it was not, in fact, made below cost or that it was not for the purpose of injuring, harassing or destroying competition, shall be upon the person charged with a violation of this section. As used herein the term "cost" shall be construed to mean the price paid for Grade A or Class I milk in the area where such sale is made plus a reasonable allocation of processing and marketing expenses. In determining whether any sale has been made in violation of this section, the Commission shall consider all discounts, rebates, gratuities or any other matters which may have the effect of either directly or indirectly reducing the price received by the distributor or producer-distributor or retailer involved. In the absence of specific proof to the contrary by a retailer as evidenced by a reasonable standard or method of accounting regularly employed by such retailer, the "cost" of the milk to the retailer shall be deemed to be the invoice price paid or incurred for the purchase of milk, plus a minimum of seven per cent (7%) of the invoice price, computed to the nearest half cent ($\frac{1}{2}\phi$) per sales unit, this being deemed to be a reasonable allocation of the retailer's expense in marketing its milk. Where a retailer processes its own milk, or purchases its milk from a subsidiary corporation, the term "cost" as used herein shall be deemed to be the prevailing price at which milk is being purchased in that market area by competing retailers, plus a minimum of seven per cent (7%) thereof, computed to the nearest half cent ($\frac{1}{2}\phi$) per sales unit, in the absence of specific proof to the contrary in the manner set out above, both as to all costs involved in processing the milk as well as the cost of doing business by the retailer. The prima facie case of a violation of this section, made by proof of sale below cost, may be rebutted by proof of any of the following facts:

- (1) The merchandise was damaged, or
 - (2) The milk was sold upon the final liquidation of a business, or
 - (3) The milk was sold to an organized charity or to a relief agency, or
 - (4) The milk was sold by an officer acting under the direction of any court.
- (1955, c. 406, s. 1; 1959, c. 1021; 1965, c. 936, s. 2.)

Editor's Note.—

The 1965 amendment added the last three sentences.

Applied in State ex rel. North Carolina

Milk Comm'n v. Dagenhardt, 261 N.C. 281, 134 S.E.2d 361 (1964).

ARTICLE 31.*North Carolina Seed Law.*

§ 106-277. Purpose.—The purpose of this article is to regulate the labeling, possessing for sale, sale and offering or exposing for sale of agricultural seeds, vegetable seeds and screenings; to prevent misrepresentation thereof; and for other purposes. (1963, c. 1182.)

Editor's Note.—The 1963 amendment, effective Jan. 1, 1964, rewrote this article, designating the sections therein as §§ 106-

277 to 106-277.28. Prior to the amendment this article consisted of §§ 106-277 to 106-284.4.

§ 106-277.1. Short title.—This article shall be known by the short title of "The North Carolina Seed Law of 1963." (1941, c. 114, s. 1; 1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.2. Definitions.—As used in this article, unless the context clearly requires otherwise:

- (1) The term "advertisement" means all representations, other than those required on the label, disseminated in any manner or by any means, relating to seed within the scope of this article.
- (2) The term "agricultural seeds" shall include the seed of grass, forage, cereal, fiber crops and any other kinds of seeds commonly recognized within this State as agricultural or field seeds, lawn seeds and mixtures of such seeds, and may include noxious-weed seeds when the Commissioner determines that such seed is being used as agricultural seed.
- (3) The term "Board" means the North Carolina Board of Agriculture as established under § 106-2.
- (4) The terms "certified seeds," "registered seeds" or "foundation seeds" mean seed that has been produced and labeled in accordance with the procedures and in compliance with the requirements of an official seed certifying agency.
- (5) The term "clone" means all the individuals derived by vegetative propagation from a single, original individual.
- (6) The term "code designation" means a series of numbers or letters approved by the United States Department of Agriculture and used in lieu of the full name and address of the person who tags or labels seed.
- (7) The term "Commissioner" means the Commissioner of Agriculture of North Carolina or his designated agent or agents.
- (8) The term "date of test" means the month and year the percentage of germination appearing on the label was obtained by laboratory test.
- (9) The term "dealer" or "vendor" shall mean any person, not classified as a grower, who buys, sells or offers for sale any seed for seeding purposes and shall include any person who has seed grown under contract for resale for seeding purposes.
- (10) The term "germination" means the percentages by count of seeds un-

- der consideration, determined to be capable of producing normal seedlings in a given period of time and under normal conditions.
- (11) The term "grower" shall mean any person who produces seed, directly as a landlord, tenant, sharecropper or lessee, which are offered or exposed for sale.
 - (12) The term "hard seeds" means seeds which, because of hardness or impermeability, do not absorb moisture and germinate but remain hard during the normal period of germination.
 - (13) The term "hybrid" means the first generation seed of a cross produced by controlling cross-fertilization and combining (i) two or more inbred lines or clones, or (ii) one or more inbred lines or clones with an open-pollinated variety, or (iii) two or more varieties or species, clonal or otherwise, except open-pollinated varieties of normally cross-fertilized species. The second generation or subsequent generation seed from such crosses shall not be designated as hybrids. Hybrid designations shall be treated as variety names.
 - (14) The term "inbred line" means a relatively stable and pure breeding strain resulting from not less than four successive generations of controlled self-pollination or four successive generations of back-crossing in the case of male sterile lines or their genetic equivalent.
 - (15) The term "in bulk" refers to loose seed in bins, or open containers, and not to seed in bags or packets.
 - (16) The term "inert matter" means all matter not seeds, including broken seeds, sterile florets, chaff, fungus bodies, stones and other substances found not to be seed when examined according to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this article.
 - (17) The term "kind" means one or more related species or sub-species which singly or collectively is known by one common name, for example, corn, wheat, striate lespedeza, alfalfa, tall fescue.
 - (18) The term "labeling" includes all labels and other written, printed or graphic representations in any manner whatsoever accompanying and pertaining to any seed whether in bulk or in containers and includes representations on invoices.
 - (19) The term "lot" means a definite quantity of seed, identified by a lot number or other identification, which shall be uniform throughout for the factors which appear on the label.
 - (20) The term "mixture" means seeds consisting of more than one kind or kind and variety, each present in excess of five per centum (5%) of the whole.
 - (21) "Noxious-weed seeds" shall be divided into two classes:
 - a. "Prohibited noxious-weed seeds" are the seeds of weeds which, when established on the land, are highly destructive and are not controlled in this State by cultural practices commonly used, and shall include any crop seed found to be harmful when fed to poultry or livestock.
 - b. "Restricted noxious-weed seeds" are the seeds of weeds which are very objectionable in fields, lawns and gardens in this State and are difficult to control by cultural practices commonly used.
 - (22) The term "official certifying agency" means an agency authorized or recognized and designated as a certifying agency by the laws of a state, the United States, a province of Canada or the government of a foreign country.
 - (23) The term "other crop seeds" means seeds of kinds or varieties of agri-

- cultural or vegetable crops other than those shown on the label as the primary kind or kind and variety.
- (24) The term "origin" means the state, District of Columbia, Puerto Rico, possession of the United States or the foreign country where the seed was grown.
 - (25) The term "person" shall include any individual, partnership, corporation, company, society or association.
 - (26) The term "processing" means cleaning, scarifying or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or kind and variety without cleaning, or preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.
 - (27) The term "pure seed" means agricultural or vegetable seeds, exclusive of inert matter, weed seeds and all other seeds distinguishable from the kind or kind and variety being considered when examined according to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this article.
 - (28) The term "purity" means the name or names of the kind, type or variety and the percentage or percentages thereof, the percentage of other crop seed; the percentage of weed seeds, including noxious-weed seeds; the percentage of inert matter; and the name and rate of occurrence of each noxious-weed seed.
 - (29) The terms "recognized variety name" and "recognized hybrid designation" mean the name or designation which was first assigned the variety or hybrid by the person who developed it or the person who first introduced it for production or sale after legal acquisition. Such terms shall be used only to designate the varieties or hybrids to which they were first assigned.
 - (30) The term "screenings" includes seed, inert matter and other materials removed from agricultural or vegetable seed by cleaning or processing.
 - (31) The term "North Carolina seed analysis tag" shall mean the tag designed and prescribed by the Commissioner as the official North Carolina seed analysis tag, said tag to be purchased from the Commissioner.
 - (32) The term "seed offered for sale" means any seed or grain, whether in bags, packets, bins or other containers, exposed in salesrooms, store-rooms, warehouses or other places where seed is sold or delivered for seeding purposes, and shall be subject to the provisions of the seed law, unless clearly labeled "not for sale as seed."
 - (33) The term "stop-sale" means an administrative order provided by law restraining the sale, use, disposition and movement of a definite amount of seed.
 - (34) The term "seizure" means a legal process carried out by court order against a definite amount of seed.
 - (35) The term "treated" means given an application of a substance or subjected to a process designed to reduce, control or repel disease organisms, insects or other pests which attack seeds or seedlings growing therefrom, or to improve the planting value of the seed.
 - (36) The term "variety" means a subdivision of a kind characterized by growth, plant, fruit, seed or other constant characteristics by which it can be differentiated in successive generations from other sorts of

the same kind; for example, Dixie 82 Corn, Knox Wheat, Kobe Striate Lespedeza, Ranger Alfalfa, Kentucky 31 Tall Fescue.

- (37) The term "vegetable seeds" shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seed in this State.
- (38) The term "weed seeds" means the seeds, bulblets or tubers of all plants generally recognized as weeds within this State or which may be classified as weed seed by regulations promulgated under this article.
- (39) The term "wholesaler" shall mean a dealer engaged in the business of selling seed to retailers or jobbers as well as to consumers. (1941, c. 114, s. 3; 1943, c. 203, s. 1; 1945, c. 828; 1949, c. 725; 1953, c. 856, ss. 1-3; 1963, c. 1182.)

§ 106-277.3. Label or tag requirements—Generally.—Each container of agricultural and vegetable seeds which is sold, offered or exposed for sale, or transported within or into this State for seeding purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language giving the information required under G. S. 106-277.4 through 106-277.7, which information shall not be modified or denied in the labeling or on another label attached to the container. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

What Indictment Should Allege. — See same catchline under § 106-277.9.

§ 106-277.4. Same—Treated seeds.—(a) All seeds which are treated, as defined in this article, shall be labeled to show the following information on a separate label, or on the same label as used for other information (purity, germination, etc.) required by this article, or on the container of seed.

- (1) A word or statement in type no smaller than eight (8) points indicating that the seed has been treated.
- (2) The commonly accepted coined, chemical (generic) or abbreviated chemical name of a substance or a description of any process (other than application of a substance) used in such treatment in type no smaller than eight (8) points.
- (3) A caution statement if the substance used in such treatment in the amount remaining with the seed is harmful to humans or other vertebrate animals.

(b) Seed treated with a mercurial or similarly toxic substance, if any amount remains with the seed, shall be labeled to show a statement such as "Poison," "Poison Treated," or "Treated with Poison." The word "Poison" shall be in type no smaller than eight (8) points and shall be in red letters on a distinctly contrasting background. In addition, the label shall show a representation of a skull and crossbones at least twice the size of the type used for the word "Poison" and the statement indicating that the seed has been treated.

(c) Seed treated with other harmful substances (other than mercurials or similarly toxic substances), if the amount remaining with the seed is harmful to humans or other vertebrate animals, shall be labeled to show the word "Caution" in red letters in type no smaller than eight (8) points, followed by the statement "Do not use for food, feed, or oil" in type no smaller than eight (8) points. Seed treated with substances other than mercurials or similarly toxic substance in containers of four (4) ounces or less need not be labeled to show the caution statement.

(d) Seed commingled with treated seed shall be labeled "treated," and the percentage of treated seed and the substance used shall be stated.

(e) If the seed is treated with an inoculant, the date beyond which the inoculant

is not to be considered effective (date of expiration) shall be declared on the label. (1963, c. 1182.)

§ 106-277.5. **Same—Agricultural seeds.**—Agricultural seeds sold, offered or exposed for sale, or transported for sale within this State shall be labeled to show the following information:

- (1) The recognized name of the kind or kind and variety of each agricultural seed component in excess of five per cent (5%) of the whole and the percentage by weight of each in the order of its predominance. When more than one component is required to be named, the word "mixture" or "mixed" shall be shown conspicuously on the label.
- (2) Lot number or other lot identification.
- (3) Net weight.
- (4) Origin, if known. If the origin is unknown, the fact shall be stated.
- (5) Percentage by weight of inert matter.
- (6) Percentage by weight of agricultural seeds and/or vegetable seeds (which shall be designated as "other crop seeds") other than those named on the label. Different varieties of the same kind of seed, when in quantities of less than five per cent (5%) will be considered as other crop seed.
- (7) Percentage by weight of all weed seeds, including noxious-weed seeds.
- (8) For each named agricultural seed:
 - a. Percentage of germination, exclusive of hard seed.
 - b. Percentage of hard seeds, if present.
 - c. The calendar month and year the test was completed to determine such percentages.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.

- (9) The name and number per pound of each kind of restricted noxious-weed seed present.
- (10) Name and address or code designation of the person who labeled said seed or who sells, offers or exposes said seed for sale within this State. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

§ 106 277.6. **Same—Vegetable seeds in containers of one pound or less.**—Labels for vegetable seeds in containers of one pound or less shall show the following information:

- (1) Name of kind and variety of seed.
- (2) Origin, for pepper seed in containers of one ounce or more. If unknown, so stated.
- (3) The year for which the seed is packed, provided the words "packed for" shall precede the year, or the percentage of germination, month and year tested.
- (4) For seeds which germinate less than the standards last established by the Commissioner and approved by the Board of Agriculture under the article:
 - a. Percentage of germination, exclusive of hard seed.
 - b. Percentage of hard seed, if present.
 - c. The calendar month and year the test was completed to determine such percentage.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.

- d. The words "Below Standard" in not less than eight (8) point type.

- (5) Name and address of the person who labeled said seed or who sells or exposes said seed for sale within this State. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

§ 106 277.7. Same — Vegetable seeds in containers of more than one pound.—Vegetable seeds in containers of more than one pound shall be labeled to show the following information:

- (1) The name of each kind and variety present in excess of five per cent (5%) and the percentage by weight of each in order of its predominance.
- (2) Lot number or other lot identification.
- (3) Origin, for snap bean and pepper seed only. If unknown, so stated.
- (4) For each named vegetable seed:
 - a. The percentage of germination exclusive of hard seed.
 - b. The percentage of hard seed, if present.
 - c. The calendar month and year the test was completed to determine such percentages.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.

- (5) Net weight, except when in bulk as defined in this article.
- (6) Name and address or code designation of the person who labeled said seed or who sells, offers or exposes said seed for sale within this State.
- (7) No tag or label shall be required, unless requested, on seeds sold directly to and in the presence of the purchaser and taken from a bag or container properly labeled. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

§ 106 277.8. Responsibility for presence of labels.—(a) The immediate vendor of any lot of seed which is sold, offered or exposed for sale shall be responsible for the presence of the labels required to be attached to any lots of seed whether he is offering for sale or selling seed which bears labels of a previous vendor, with or without endorsement, or bears his own label.

(b) The labeler of any original or unbroken lot of seed shall be responsible for the presence of and the information on all labels attached to said lot of seed at the time he sells or offers for sale such lot of seed. (1963, c. 1182.)

§ 106 277.9. Prohibitions.—It shall be unlawful for any person:

- (1) To transport, to offer for transportation, to sell, offer for sale or expose for sale within this State agricultural or vegetable seeds for seeding purposes:
 - a. Unless a seed license has been obtained in accordance with the provisions of this article.
 - b. Unless the test to determine the percentage of germination required by §§ 106-277.5 through 106-277.7 shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation.
 - c. Not labeled in accordance with the provisions of this article or having a false or misleading labeling or claim.
 - d. Pertaining to which there has been a false or misleading advertisement.
 - e. Consisting of or containing prohibited noxious-weed seeds.
 - f. Containing restricted noxious-weed seeds, except as prescribed by rules and regulations promulgated under this article.

- g. Containing weed seeds in excess of two per cent (2%) by weight unless otherwise provided in rules and regulations promulgated under this article.
 - h. That have been treated and not labeled as required in this article.
 - i. Pepper seed in containers holding one ounce or more of seed, not produced in the arid regions of the western United States, unless treated in accordance with a procedure approved by the North Carolina Commissioner of Agriculture and labeled to reflect the procedure used.
 - j. To which there is affixed names or terms that create a misleading impression as to the kind, kind and variety, history, productivity, quality or origin of the seeds.
 - k. Represented to be certified, registered or foundation seed unless it has been produced, processed and labeled in accordance with the procedures and in compliance with rules and regulations of an officially recognized certifying agency.
 - l. Represented to be a hybrid unless such seed conforms to the definition of a hybrid as defined in this article.
 - m. Unless it conforms to the definition of a "lot."
 - n. Any variety or hybrid not recorded with the Commissioner as required under rules and regulations promulgated pursuant to this article.
 - o. Seed of any variety or hybrid that has been found by official variety tests to be inferior, misrepresented or unsuited to conditions within the State. The Commissioner may prohibit the sale of such seed by and with the advice of the director of research of the North Carolina Agricultural Experiment Station.
 - p. Using a designation on seed tag in lieu of the full name and address of the person who labels or tags seed unless such designation qualifies as a code designation under this article.
- (2) To transport, offer for transportation, sell, offer for sale or expose for sale seeds, whole grain and screenings not for seeding purposes unless labeled "not for seeding purposes."
 - (3) To detach, alter, deface or destroy any label provided for in this article or the rules and regulations promulgated thereunder, or to alter or substitute seed in any manner that defeats the purposes of this article.
 - (4) To disseminate false or misleading advertisement in any manner concerning agricultural seeds, vegetable seeds or screenings.
 - (5) To hinder or obstruct in any manner an authorized agent of the Commissioner in the performance of his lawful duties.
 - (6) To fail to comply with or to supply inaccurate information in reply to a stop-sale order; or to remove tags attached to or to move or dispose of seed or screenings held under a stop-sale order unless authorized by the Commissioner.
 - (7) To use the name of the Department of Agriculture or the results of tests and inspections made by the Department for advertising purposes.
 - (8) To use the words "type" or "trace" in lieu of information required by §§ 106-277.4 through 106-277.7.
 - (9) To label and offer for sale seed under the scope of this article without keeping complete records as specified in § 106-277.12. (1941, c. 114, s. 5; 1943, c. 203, s. 3; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 4; 1957, c. 263, s. 2; 1959, c. 585, s. 2; 1963, c. 1182.)

Indictment for Sale of Improperly Labeled Seed.—An indictment under this section charging the sale or offering for sale of seed not labeled in accordance with § 106-277.8 should allege the person to whom defendant sold or offered to sell seed

not properly labeled, or that the purchaser was in fact unknown, the particulars in which the label failed to meet the statutory requirements, and where and how the seed was exposed to sale. *State v. Bisette*, 250 N. C. 514, 108 S. E. (2d) 858 (1959).

An indictment under this section charg-

ing that defendant sold or offered for sale tobacco seed having a false or misleading label should allege the person to whom the seed was sold or offered for sale or that the purchaser was in fact unknown, and the intent to defraud. *State v. Bisette*, 250 N. C. 514, 108 S. E. (2d) 858 (1959).

§ 106-277.10. Exemptions.—(a) When the required analysis and other information regarding the seed is present on a seedsman's label or tag which bears an official North Carolina seed stamp or is accompanied by the North Carolina seed analysis tag on which is written, stamped or printed the words "See Attached Tag for Seed Analysis," the provisions of §§ 106-277.5 through 106-277.7 shall be deemed to have been complied with.

(b) The official tag or label of the North Carolina Crop Improvement Association shall be considered an "official North Carolina seed analysis tag" when attached to containers of seed duly certified by the said Association or when it refers to an accompanying tag which carries the same information required in §§ 106-277.5 through 106-277.7 and when fees applicable to the North Carolina seed analysis tag have been paid to the Commissioner.

(c) The label requirements for peanuts, cotton and tobacco seed may be limited to:

- (1) Lot number or other identification.
- (2) Origin, if known. If unknown, so stated.
- (3) Commonly accepted name of kind and variety.
- (4) Name and number per pound of noxious-weed seeds.
- (5) Percentage of germination with month and year of tests.
- (6) Name and address of person who labeled said seed or who sells, offers, or exposes said seed for sale.

(d) The provisions of §§ 106-277.3 through 106-277.7 do not apply:

- (1) To seed or grain sold or represented to be sold for purposes other than for seeding provided that said seed is labeled "not for seeding purposes" and that the vendor shall make it unmistakably clear to the purchaser of such seed or grain that it is not for seeding purposes.
- (2) To seed for processing when consigned to, being transported to or stored in an approved processing establishment, provided that the invoice or labeling accompanying said seed bears the statement "seed for processing" and provided further that other labeling or representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this article.
- (3) To seed sold by a farmer grower to a seed dealer or processor, or to seed in storage in or consigned to a seed cleaning or processing plant; provided that any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this article.
- (4) To any carrier in respect to any seed or screenings transported or delivered for transportation in the ordinary course of its business as a carrier; provided that such carrier is not engaged in producing, processing or marketing agricultural or vegetable seeds or screenings subject to provisions of this article.

(e) No person shall be subject to the penalties of this article for having sold, offered or exposed for sale in this State any agricultural or vegetable seeds which were incorrectly labeled or represented as to origin, kind or variety when such seeds cannot be identified by examination thereof unless such person has failed to obtain an invoice or grower's declaration giving origin, kind and variety or to take such other precautions as may be necessary to insure the identity to be that

stated. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

§ 106-277.11. Disclaimers, nonwarranties and limited warranties.—The use of a disclaimer, nonwarranty or limited warranty clause in any invoice, advertising [or] written, printed or graphic matter pertaining to any seed shall not constitute a defense, or be used as a defense in any way, in any prosecution or in any proceedings for confiscation of seeds brought under the provisions of this article or rules and regulations made and promulgated thereunder. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.12. Records.—All persons transporting or delivering for transportation, selling, offering or exposing for sale agricultural or vegetable seeds if their name appears on the label shall keep for a period of two (2) years a file sample and a complete record of such seed, including invoices showing lot number, kind and variety, origin, germination, purity, treatment, and the labeling of each lot. The Commissioner or his duly authorized agents shall have the right to inspect such records in connection with the administration of this article at any time during customary business hours. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.13. Tolerances to be established and used in enforcement.—Due to variations which may occur between the analyses or tests and likewise between label statements and the results of subsequent analyses and tests, recognized tolerances shall be employed in the enforcement of the provisions of this article, except as otherwise established by appropriate rules and regulations promulgated under authority of this article. (1963, c. 1182.)

§ 106-277.14. Administration.—The duty of enforcing this article and its rules and regulations and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. (1963, c. 1182.)

§ 106-277.15. Rules, regulations and standards.—The Commissioner of Agriculture, jointly with the Board of Agriculture, after public hearing immediately following ten (10) days public notice may adopt such rules, regulations and standards which they may find to be advisable or necessary to carry out and enforce the purposes and provisions of this article, which shall have the force and effect of law. The Commissioner and Board of Agriculture shall adopt rules, regulations and standards as follows:

- (1) Prescribing the methods of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed, and determining the tolerance to be followed in the administration of this article.
- (2) Declaring a list of prohibited and restricted noxious weeds, conforming with the definitions stated in this article, and to add to or subtract therefrom, from time to time, after a public hearing following due public notice.
- (3) Declaring the maximum percentage of total weed seed content permitted in agricultural seed.
- (4) Declaring the maximum number of "restricted" noxious-weed seeds per pound of agricultural seed permitted to be sold, offered or exposed for sale.
- (5) Declaring the minimum percentage of germination permitted for sale as "Agricultural Seeds."
- (6) Declaring germination standards for vegetable seeds.
- (7) Prescribing the form and use of tags or stamps to be used in labeling seed.
- (8) Prescribing such other rules and regulations as may be necessary to secure the efficient enforcement of this article. (1941, c. 114, s. 6, 1943, c. 203, s. 4, 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.16. **Seed testing facilities.** — The Commissioner is authorized to establish and maintain or make provision for seed testing facilities, to employ educationally qualified persons, to make or provide for making purity and germination tests of seeds, upon request, for farmers or seedsmen, and to prescribe rules and regulations governing such testing, and to incur such expenses as may be necessary to comply with these provisions. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.17. **Varieties or hybrids; registration; testing; prohibiting sale if inferior, misrepresented or unsuitable.**—The Commissioner is authorized to require the registration, after field testing for performance and true-ness-to-variety, of any variety or hybrid as a prerequisite to sale in this State and to promulgate rules and regulations pertaining to same. The Commissioner is further authorized to prohibit the sale of any variety or hybrid or any kind of crop, by and with the advice of the director of research of the North Carolina Agricultural Experiment Station, that has been found by official field tests to be inferior, misrepresented or unsuited to conditions within the State. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.18. **Registration and licensing of dealers.**—It shall be the duty of the Commissioner and he is hereby authorized to require each seed dealer selling, offering or exposing for sale in, or exporting from, this State any agricultural or vegetable seeds for seeding purposes, including packet or package seeds, to register with the Commissioner and to obtain a license annually. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182.)

§ 106-277.19. **Revocation or refusal of license for cause; hearing; appeal.**—The Commissioner is authorized to revoke any seed license issued, or to refuse to issue a seed license to any person as hereinafter provided, upon satisfactory proof that said person has repeatedly violated any of the provisions of this article or any of the rules and regulations made and promulgated thereunder; provided that no license shall be revoked or refused until the person shall have first been given an opportunity to appear at a hearing before the Commissioner. Any person who is refused a license, or whose license is revoked by any order of the Commissioner, may appeal within thirty (30) days from said order to the Superior Court of Wake County or the superior court of the county of his residence. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.20. **Right of entry for purposes of inspection; duty of vendors.**—For the purpose of carrying out this article the Commissioner or his agent is authorized to enter upon any public or private premises during regular business hours in order to have access to seeds subject to this article and the rules and regulations thereunder. It shall be the duty of the dealer or vendor to arrange seed lots so as to be accessible for inspection, and to provide such information and records as may be deemed necessary. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.21. **Sampling, inspecting and testing; notice of violations.**—It shall be the duty of the Commissioner, who may act through his authorized agents, to sample, inspect, make analysis of and test agricultural and vegetable seeds transported, held in storage, sold, offered or exposed for sale within this State for sowing purposes at such time and place and to such extent as he may deem necessary to determine whether said seeds are in compliance with the provisions of this article, and to notify promptly the person or persons who transported, had in his possession, sold, offered or exposed the seeds for sale of

any violation. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.22. Stop-sale orders; penalty covering expenses; appeal.—The Commissioner is authorized to issue and enforce a written or printed “stop-sale” order to the owner or custodian of any lot of agricultural or vegetable seeds which the Commissioner, or his authorized agent, finds is in violation of any of the provisions of this article or the rules and regulations promulgated thereunder, which order shall prohibit further sale or movement of such seed until such officer has evidence that the law has been complied with and a written release has been issued to the owner or custodian of said seed by the enforcement officer. Any person violating the labeling requirements of the law shall be subject to a penalty covering all costs and expenses incurred in connection with the withdrawal from sale and the release of said seed. With respect to seeds which have been denied sale as provided in this section, the owner, custodian or the person labeling such seeds shall have the right to appeal from such order to the superior court of the county in which the seeds are found, praying for judgment as to the justification of said order and for discharge of such seed from the order prohibiting the same in accordance with the findings of the court; and provided, further, that the provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this article. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.23. Notice of violations; hearings, prosecutions or warnings.—It shall be the duty of the Commissioner to give notice of every violation of the provisions of this article with respect to agricultural or vegetable seeds, mixtures of such seeds, or screenings to the person in whose hands such seeds or screenings are found, and to send copies of such notice to the shipper of such seed or screenings and to the person whose “analysis tag or label” is attached to the container of such seeds or screenings, in which notice he may designate a time and place for a hearing. The person or persons involved shall have the right to introduce evidence either in person or by agent or attorney. If, after hearing, or without such hearing in the event the person fails or refuses to appeal, the Commissioner is of the opinion that the evidence warrants prosecution he may institute proceedings in a court of competent jurisdiction in the locality which the violation occurred or, if he believes the public interest will be adequately served thereby, he may direct to the alleged violator a suitable written notice or warning. (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.24. Penalty for violations.—Any person, firm or corporation violating any provision of this article or any rule or regulation adopted pursuant thereto shall be guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than five hundred dollars (\$500.00). (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.25. Seizure and disposition of seeds violating article.—Any lot of agricultural or vegetable seeds, mixtures of such seeds or screenings being sold, exposed for sale, offered for sale or held with intent to sell in this State contrary to the provisions of this article shall be subject to seizure on complaint of the Commissioner to the resident judge of the superior court in the county in which the seeds, mixtures of such seeds or screenings are located. In the event the court finds the seeds or screenings to be in violation of the provisions of this article and orders the condemnation thereof, such seeds or screenings shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this State; provided that in no instance shall such disposition be ordered by the court without first having given the claimant an opportunity to apply to the court for the release of the seeds, mixtures of such seeds or

screenings with permission to process or relabel to bring them into compliance with the provisions of this article. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.26. Publication of test results and other information.—The Commissioner is authorized to publish the results of analyses, tests, examinations, studies and investigations made as authorized by this article, together with any other information he may deem advisable. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.27. Cooperation with United States Department of Agriculture.—The Commissioner is authorized to cooperate with the United States Department of Agriculture in seed law enforcement and testing seed for trueness as to kind and variety. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.28. Fees for tags, stamps and licenses.—For the purpose of providing a fund to defray the expense of inspection, examination, analyses of seeds and enforcement of the provisions of the article:

- (1) Each seed dealer or grower selling, offering or exposing for sale in this State any agricultural or vegetable seeds for seeding purposes shall purchase from the Commissioner for two cents (2¢) each official North Carolina seed analysis tags or stamps and shall attach a tag (or a stamp on the seedsman's label) to each container holding ten pounds or more of seed, provided that this subdivision shall not apply to the sale of seed by a farmer who sells only seed grown on his farm and when such sales are confined to his farm.
- (2) Each seed dealer selling, offering, or exposing for sale in, or exporting from, this State any agricultural or vegetable seeds for seeding purposes shall register with the Commissioner and shall obtain a license annually on January 1 of each year and shall pay for such license as follows:
 - a. Wholesale, or wholesale and retail, seed dealer in one location \$25.00
 - b. Central office of chain stores, or wholesale cooperatives operating within this State selling or furnishing seeds for retail \$25.00
 - c. Each retailer of seeds or branch of wholesale dealer or cooperative selling seeds at different locations with sales in excess of five hundred dollars (\$500.00) \$15.00
 - d. Each retailer of seeds, including chain stores, with sales more than three hundred dollars (\$300.00) but not in excess of five hundred dollars (\$500.00) \$10.00
 - e. Each retailer of seeds, including chain stores, with sales more than one hundred dollars (\$100.00) but not in excess of three hundred dollars (\$300.00) \$ 5.00
 - f. Each retailer of seeds, including chain stores with sales not in excess of one hundred dollars (\$100.00) \$ 1.00
 - g. Each retail dealer or place of business selling only "packet" vegetable and flower seeds: One dollar (\$1.00) for retail value less than one hundred dollars (\$100.00); two dollars (\$2.00) for the first one hundred dollars (\$100.00); and two dollars (\$2.00) for each one hundred dollars (\$100.00) thereafter, based on commission or consignment. Containers which hold one pound or less of seed are considered packets. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182.)

§§ 106-278 to 106-284.4.

Editor's Note.—See note to § 106-277.

ARTICLE 34.

Animal Diseases.

Part 3. Hog Cholera.

§ 106-316.5: Repealed by Session Laws 1963, c. 1084, s. 2.

§ 106-320: Repealed by Session Laws 1963, c. 1084, s. 2.

§ 106-322.1. **State-federal hog cholera cooperative agreements; establishment of hog cholera eradication areas.**—The Commissioner of Agriculture is authorized to enter into cooperative State-federal agreements with the United States Department of Agriculture for the purpose of State-federal programs for the control and eradication of hog cholera. The Commissioner of Agriculture may designate individual counties or two or more counties as hog cholera eradication areas. (1963, c. 1084, s. 1.)

§ 106-322.2. **Indemnity payments.**—If it appears to be necessary for the control and eradication of hog cholera to destroy or slaughter swine affected with such disease and to compensate the owners for the loss thereof, the State Veterinarian is authorized to agree on the part of the State, in the case of swine destroyed or slaughtered on account of being affected with hog cholera or exposure to same to pay one third of the difference between the appraised value of each animal destroyed or slaughtered and the value of the salvage thereof; provided, that the State indemnity shall not be in excess of the indemnity payments made by the federal cooperating agency; provided further, that State indemnity payments shall be restricted to swine located on the farm or feed lot of the owner or authorized representative of the owner; provided further, that in no case shall any payments by the State be more than twelve dollars and fifty cents (\$12.50) for any grade animal nor more than twenty-five dollars (\$25.00) for any purebred animal and subject to available State funds. The procedure such as appraisal, disposal and salvage for killing such diseased and exposed swine shall be carried out in the same manner as that required under the General Statutes of North Carolina governing compensation for killing other diseased animals. (1963, c. 1084, s. 1.)

Part 4. Compensation for Killing Diseased Animals.

§ 106-323. **State to pay part of value of animals killed on account of disease.**

Cross Reference.—

As to indemnity for swine destroyed on

account of being affected with hog cholera,
see § 106-322.2.

Part 8. Bang's Disease.

§ 106-390. **Blood samples; diseased animals to be branded and quarantined; sale, etc.**—All blood samples for a Bang's disease test shall be drawn by a qualified veterinarian whose duty it shall be to brand all animals affected with Bang's disease with the letter "B" on the left hip or jaw, not less than three or more than four inches high, and to tag such animals with an approved cattle ear tag and to report same to the State Veterinarian. Cattle affected with Bang's disease shall be quarantined on the owner's premises. No animal affected with Bang's disease shall be sold, traded or otherwise disposed of except for immediate slaughter, and it shall be the duty of the person disposing of such infected animals to see that they are promptly slaughtered and a written report of same is made to the State Veterinarian. All dairy and breeding cattle over six months of age offered or sold at public sale, except for immediate slaughter, shall be negative to a Bang's test made within thirty days prior to sale and approved by the State Veterinarian: Provided, however, the State Veterinarian is author-

ized to issue a written permit for public show or sale to the owners or authorized representatives of the owners of officially calfhood vaccinated heifers twenty-four (24) months of age or under with or without a blood test when such heifers originate directly from a herd not under quarantine or known to be infected with or exposed to Bang's disease and located in a certified Brucellosis free area or modified certified Brucellosis area. (1937, c. 175, s. 3; 1945, c. 462, s. 2; 1959, c. 1171; 1963, c. 489.)

Editor's Note.—

The 1963 amendment rewrote the proviso at the end of the section.

ARTICLE 35.

Public Livestock Markets.

§ 106 408. Marketing facilities prescribed; records of purchases and sales; time of sales; notice.—All public livestock markets operating under this article shall have proper facilities for handling livestock, which shall include proper pens for holding and segregating animals, properly protected from weather; an adequate water supply; satisfactory scales if animals are bought, sold, or exchanged by weight, said scales to be approved by the North Carolina Division of Weights and Measures; and such other equipment as the Commissioner of Agriculture may deem necessary for the proper operation of the market. The premises, including yards, pens, alleys, and chutes shall be cleaned and disinfected at least weekly in accordance with the regulations issued in accordance with this article. Said market shall keep a complete permanent record showing from whom all animals are received and to whom sold, the weight, if purchased or sold by weight, the price paid and the price received, such record to be available to the Commissioner of Agriculture or his authorized representative.

The sales of all livestock at livestock auction markets shall start promptly at 1:00 P. M. on each sales day and the selling of livestock shall be continuous until all livestock is sold; provided, however, any livestock sale requiring no more than four hours selling time may begin sales at 2:00 P. M., but such sales must be concluded not later than 6:00 P. M.

All public livestock market operators operating under this article who shall begin sales later than 1:00 P. M., as provided in this section, shall post notice of the sales starting time in a conspicuous place on the market premises and shall notify the State Veterinarian in writing at least ten days prior to the initial sale. In the event of subsequent changes in starting times, notice shall be posted on the premises and notification given to the State Veterinarian in the same manner as set out above. (1941, c. 263, s. 3; 1949, c. 997, s. 1; 1961, c. 275, s. 1.)

Local Modification. — Robeson: 1961, c. 275, s. 1(a). visio to the second paragraph and added the last paragraph.

Editor's Note.—

The 1961 amendment inserted the pro-

ARTICLE 38.

Marketing Cotton and Other Agricultural Commodities.

§ 106-429.1. Short title.—The provisions of this article may be known and designated as the "North Carolina Agricultural Warehouse Act." (1965, c. 1029, s. 2.)

Editor's Note.—Section 1 of the act inserting this section sets out its purposes.

§ 106-430. Purpose of law.

Editor's Note.—

In the second paragraph of the Editor's Note under this section in the Replace-

ment Volume "inserting § 106-431" should read "inserting § 106 499"

Obligations of Warehouse Manager.—

For obligations assumed by the manager of a warehouse operating pursuant to the provisions of this article, see *Ahoskie Production Credit Ass'n v. Whedbee*, 251 N. C. 24, 110 S. E. (2d) 795 (1959).

§ 106-432.1. When employer-employee relationship deemed to exist; when person deemed employee, agent or officer of State, Board, superintendent or system.—For the purposes of this article, the relationship and status of employer-employee shall be deemed to exist only: When created and subsisting under an express contract of employment, written or oral; for a term, or terminable at the will of the employer; wherein the right to make and enter into the contract of hire or employment, and the right to fire, or to discharge, either at will or for cause reserved in the contract of employment, shall remain with the employer, with respect to the person employed; and the right to prescribe, direct, supervise and closely control the duties of the employee and the discharge of his duties of employment, remains substantially with the employer; and where the compensation of the employee is determined, pursuant to contract or otherwise, by the employer and paid wholly or in part from funds of the employer or funds controlled, at least in part, by and available to him.

No person functioning under or pursuant to this article shall be deemed an employee or agent or officer of the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, or of the State warehouse system, as such: Unless in this article and in pertinent regulations and in an express contract, specifically made and designated an employee or agent of the State or State agency (whether as an assistant, manager, inspector, grader, or classer) and unless actually engaged in and within the scope of his duties as an employee, official, or agent of the State of North Carolina, the Board, the superintendent or the system; and unless such person is compensated in whole or in part from funds of or within the control of the State of North Carolina; and unless subject to the right of the State or any of the State agencies, officers and instrumentalities mentioned, to engage, employ or hire him and to terminate his employment or agency, or to contract with him with respect to the terms and conditions and termination of his agency or employment; and unless subject to the direct control of the State of North Carolina or any of its officers, agencies or entities, with respect to fixing, supervising and controlling his duties of employment or agency. (1965, c. 1029, s. 3.)

Editor's Note.—Section 1 of the act inserting this section sets out its purposes.

§ 106-433. Employment of officers and assistants; licensing private facilities as components of warehouse system; licensing employees of private facilities.—(a) The Board of Agriculture shall have authority to employ a warehouse superintendent and necessary assistants, local managers, examiners, inspectors, expert cotton classers, and such other employees as may be necessary in carrying out the provisions of this article, and fix and regulate their duties.

(b) The Board of Agriculture acting through the State warehouse superintendent is authorized, from time to time, to license privately owned or operated warehouse facilities as component units of the State warehouse system (whether under a lease of such facilities from the State or not) to operate under and pursuant to the provisions of this article, and to require or permit such licensed warehouse facility to operate and function as a component of the State warehouse system and to subordinate and maintain the licensed warehouse operation (subject to the supervision and regulation of the State warehouse superintendent) under the United States Warehouse Act, and regulations thereunder, as referred to in G.S. 106-450. Licensing and operation requirements of such licensed component warehouse facilities of the State warehouse system may be determined and regulated generally by rules and regulations prescribed by the

Board, and the State warehouse superintendent may, in addition, prescribe special rules, regulations, and conditions applicable to the particular licensed warehouse facility. Any license issued by the Board from time to time may be cancelled, revoked, or suspended in the unfettered discretion of the Board or the State warehouse superintendent, with or without cause. Such cancellation, revocation, termination or suspension shall also have the immediate effect of terminating, revoking, cancelling or suspending the operation of the warehouse facility as a component unit in the State warehouse system under the United States Warehouse Act and federal regulations issued thereunder. The Board of Agriculture or the State warehouse superintendent may, in their discretion, require and issue, and from time to time revoke, cancel, terminate or suspend, a license for individual warehouse superintendents, managers, examiners, inspectors, classers, and any other employees of privately owned and licensed warehouse facilities, and may generally fix and regulate their duties. The Board of Agriculture or the State warehouse superintendent may, in their unfettered discretion, take any action, with respect to such employees, deemed necessary to insure, or safeguard, or protect the State warehouse system, and to better carry out and enforce the provisions of this article, and those provisions of the United States Warehouse Act and regulations thereunder which may be incumbent upon the Board or the superintendent. Such individuals, whether licensed or not, shall not be employees or agents of the "State" (which is defined for the purposes of this section to mean and include the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, or the State warehouse system). (1919, c. 168, s. 3; 1921, c. 137, s. 3; C. S., s. 4925 (c); 1965, c. 1029, s. 4.)

Editor's Note. — The 1965 amendment section (b). Section 1 of the act sets out designated the former provisions of the its purposes.
section as subsection (a) and added sub-

§ 106-434. Bonds of superintendent, State employees and private warehouse facilities and their employees.—The person named as State warehouse superintendent shall give bond to the State of North Carolina in the sum of fifty thousand dollars (\$50,000) to guarantee the faithful performance of his duties, the expense of said bond to be paid by the State, to be approved as other bonds for State officers. The State warehouse superintendent shall, to safeguard the interests of the State, require bonds from other State employees or agents authorized in § 106-433 (a), and may, both for the purpose of safeguarding the interests of the State and of depositors of agricultural commodities with valid, subsisting, and duly authenticated official negotiable warehouse receipts issued under and pursuant to § 106-441, or the pledgee or transferee of such official negotiable warehouse receipts under § 106-442, require bonds with corporate surety from privately owned and licensed warehouse facilities and from warehouse superintendents, managers and other employees of the licensed warehouse facilities authorized under G.S. 106-433 (b). All such bonds shall be in such ample penal sums and secured by corporate surety authorized to do business in the State of North Carolina, as the State warehouse superintendent may direct and find that ordinary business experience in such matters would require. (1919, c. 168, s. 4; 1921, c. 137, s. 4; C. S., s. 4925 (d); 1965, c. 1029, s. 5.)

Editor's Note. — The 1965 amendment for the former last sentence. Section 1 of substituted the present last two sentences the act sets out its purposes.

§ 106-435. Fund for support of system; collection and investment.

Liability of Fund Is Secondary.—Judgment against defendants who had deposited cotton and received negotiable warehouse receipts without disclosing that the cotton was a portion of crops included in recorded liens held by plaintiff and judgment against the State Treasurer to be paid from the fund provided by this section should provide that the liability of the defendants depositing the cotton is primary and the liability of guaranty fund is secondary. *Ahoskie Production Credit Ass'n v. Whedbee*, 251 N. C. 24, 110 S. E. (2d) 795 (1957).

§ 106-437. Qualifications of warehouse manager. — No otherwise qualified person shall be qualified as manager of a warehouse unless the members of the board of county commissioners and the president of some bank in the county in which the warehouse is operated shall certify to the State warehouse superintendent that the person desiring to be warehouse manager is in their opinion a man of good character, competent, and of good reputation, deserving the confidence of the people. (1919, c. 168, s. 6; 1921, c. 137, s. 7; C. S., s. 4925(g); 1965, c. 1029, s. 6.)

Editor's Note. — The 1965 amendment substituted "No otherwise qualified person shall be qualified as manager" for "No

man shall be employed as manager" at the beginning of this section. Section 1 of the act sets out its purposes.

§ 106-439. Leasing and licensing of property by superintendent; manner of operating warehouse system.—The State warehouse superintendent shall have the power to lease for State operation by State employees and for stated terms property for the warehousing by the State of cotton and other agricultural commodities. The State warehouse superintendent shall also have the power to lease from, and to license private or corporate warehouse property for the warehousing of such agricultural commodities under State license, general supervision and control, as a component unit of the State warehouse system. The terms and conditions of the State license shall prevail over the stated terms and conditions of the lease. In no event, however, regardless of the terms and conditions of the lease, shall any rental be paid by the State until the operating expenses of the leased warehouse facility shall have been paid from the income from the leased warehouse facility. The State shall not be responsible in any case for the payment of rental, except from the income of any leased warehouse facility in excess of the operating expenses of the facilities. The State warehouse superintendent shall fix the terms upon which private or corporate warehouses may be permitted to operate under State license and supervision, and obtain the benefits thereof, regardless of the terms and conditions of any lease agreement between the private or corporate warehouse and the State. It shall be his special duty to foster and encourage the erection of warehouses in the various cotton-growing and agricultural counties of the State for operation under the terms of this article, and to provide an adequate system of inspection, and of rules, forms, and reports to insure the security of the system, such matters to be approved by the State Board of Agriculture. The violation of such rules shall be a misdemeanor. Cotton and other agricultural products may be stored in such warehouses by any person owning them, and receive all of the benefits accruing from operation of such warehouses under direct State management, or as the case may be, under State license, general supervision and regulation, as component units of the State warehouse system and any person permitted to store cotton or other products in any such warehouse shall pay to the manager of the warehouse such sum or sums for rent or storage as may be agreed upon, subject to § 106-432, by the manager, and such person desiring storage therein. (1919, c. 168, s. 10; 1921, c. 137, s. 9; C. S., s. 4925(i); 1941, c. 337, s. 3; 1965, c. 1029, s. 7.)

Editor's Note.—

The 1965 amendment rewrote the former first sentence, including the proviso, to appear as the present first six sentences; deleted "by any officer of the system" following "rules" in the present eighth sentence and substituted "operation

of such warehouses under direct State management, or as the case may be, under State license, general supervision and regulation, as component units of the State warehouse system" for "such State management" in the last sentence. Section 1 of the act sets out its purposes.

§ 106-441. Grading and weighing of products; negotiable receipts; authentication of receipts.—When agricultural commodities other than cotton have been stored in warehouses operated under this article and have been graded and standardized in conformity with the grades and standards heretofore or here-

after promulgated by the Board of Agriculture, acting under the provisions of §§ 106-185 to 106-196, negotiable warehouse receipts of form and design approved by the Board of Agriculture may be issued. As soon as possible after any lint cotton, properly baled, is received for storage, the local manager shall, if it has not been done previously, have it graded and stapled by a federal or State classifier and legally weighed. Official negotiable receipts of the form and design approved by the Board of Agriculture shall be issued for such cotton under the seal and in the name of the State of North Carolina, stating the location of the warehouse, the name of the manager, the mark on said bale, the weight, the grade, and the length of the staple, so as to be able to deliver on surrender of the receipt the identical cotton for which it was given. On request of the depositor, negotiable receipts may be issued under this section omitting the statement of grade or staple, such receipt to be stamped on its face, "Not graded or stamped on request of the depositor." The warehouse manager shall fill in receipts issued under this section and they shall be signed by him or in his name by his duly authorized agent, and by the State warehouse superintendent or in the name of the State warehouse superintendent by his duly authorized licensee, State employee, or State agent. If the local manager cannot issue a negotiable receipt complete for cotton or other agricultural commodities, he shall issue nonnegotiable memorandum receipts therefor, said memorandum receipts to be taken up and marked "Canceled" by the local manager upon the delivery of negotiable receipts for such commodities. If the official negotiable receipt is issued for cotton or other agricultural commodities of which the manager is the owner, either solely or jointly or in common with others, the fact of such ownership must appear on the face of the receipt. No responsibility is assumed by the State warehouse system for fluctuation in weight or grade or quality due to natural causes; but in other respects the receipts issued under this section for cotton and other agricultural commodities shall be supported and guaranteed by the indemnifying fund provided in § 106-435. (1919, c. 168, s. 12; 1921, c. 137, s. 11; C. S., s. 4925(k); 1925, c. 225; 1941, c. 337, s. 4; 1965, c. 1029, s. 8.)

Editor's Note.—

The 1965 amendment rewrote the fifth sentence and inserted "or grade or qual-

ity" following "weight" near the beginning of the last sentence. Section 1 of the act sets out its purposes.

§ 106-442. Transfer of receipt; issuance and effect of receipt.

"Satisfy Himself." — This section now requires the local manager to satisfy himself. That implies that he must act as a prudent person and exercise reasonable care under existing conditions. That is the obligation which an employee owes to his employer. *Ahoskie Production Credit Ass'n v. Whedbee*, 251 N. C. 24, 110 S. E. (2d) 795 (1959).

Had the legislature intended to require an examination for recorded liens by the local manager, it would have been a simple matter to have inserted the language contained in the 1919 act which made the manager an insurer against recorded liens. *Ahoskie Production Credit Ass'n v. Whedbee*, 251 N. C. 24, 110 S. E. (2d) 795 (1959).

Facts Held Sufficient to Show Exercise of Due Diligence.—The manager of a

warehouse, having had prior dealings with the depositor of cotton, issued negotiable receipts therefor in reliance on his belief in the integrity of such depositor and the depositor's representations and written warranties that there were no liens or valid claims outstanding against the cotton; but the manager failed to examine the records in the office of the register of deeds, which would have shown registered liens against the commodity. It was held that whether the manager exercised the care of a reasonably prudent person in issuing the negotiable receipts is susceptible to different conclusions by reasonable people, and the facts were sufficient to support the inference of fact that the manager exercised due diligence. *Ahoskie Production Credit Ass'n v. Whedbee*, 251 N. C. 24, 110 S. E. (2d) 795 (1959).

§ 106-445. Rules for issuance of duplicate receipts.—A duplicate receipt is authorized to be issued for a lost or destroyed receipt, due record of the original receipt being found upon the books of the warehouse, only upon affidavit

of the owner of the original that the original receipt has been lost or destroyed, and upon the owner's giving the State warehouse superintendent bond with approved security in an amount equal to the double value of the cotton or other agricultural commodity represented by the original receipt to indemnify the State and the component warehouse facility and the State warehouse system from loss or damage and the cost of any litigation. In determining the amount of the bond required under this section, the value of cotton shall be estimated at the highest market price of middling cotton during the preceding two years. The value of other agricultural commodities shall be estimated for this purpose in accordance with regulations to be prescribed by the Board of Agriculture. (1919, c. 168, s. 15; 1921, c. 137, s. 15; C. S., s. 4925(o); 1941, c. 337, s. 8; 1965, c. 1029, s. 9.)

Editor's Note.—

The 1965 amendment substituted "A duplicate receipt is authorized to be issued" for "The State warehouse superintendent, or his duly authorized agent, and the manager of the local warehouse are authorized to issue a duplicate receipt" at

the beginning of the first sentence and substituted "the State and the component warehouse facility and the State warehouse system" for "the State warehouse superintendent and the local manager" near the end of that sentence. Section 1 of the act sets out its purposes.

§ 106-446. State not liable on warehouse debts; tax on cotton continued if losses sustained.—No debt or other liability shall be created against the State by reason of the lease or operation of the warehouse system created by this article or the storage of cotton or other agricultural commodities therein, it being the purpose of this article to establish a self-sustaining system to operate as nearly as practicable at cost, without profit or loss to the State, except that expenses of supervision may be paid by the Board of Agriculture. While it is believed that the provisions and safeguards mentioned in this article, including the bonds required and supplemental indemnifying or guarantee fund mentioned in § 106-435, will insure the security of the system beyond any reasonable possibility of loss, nevertheless, in order to establish the principle that this system should be supported by those for whose especial financial benefit it is established, it is hereby provided that in the eventuality that the system should suffer at any time any loss not fully covered by the aforementioned bonds and indemnifying fund, such losses shall be made good by having the State Board of Assessment repeat for another twelve months selected by it the special levy on ginned cotton, as prescribed in § 106-435, for the two years ending June thirtieth of the year one thousand nine hundred and twenty-three. (1919, c. 168, s. 16; 1921, c. 137, s. 16; C. S., s. 4925(p); 1941, c. 337, s. 9; 1965, c. 1029, s. 10.)

Editor's Note.—

The 1965 amendment deleted "of all officers" following "required" near the beginning of the second sentence. Section 1 of the act sets out its purposes.

§ 106-450. Compliance with United States warehouse law.—(a) The State warehouse superintendent may,

- (1) Upon approval of the Board of Agriculture, operate or cause to be operated by State employees or State agents under his immediate and direct supervision and control, any or all State owned or State leased warehouses, or
- (2) May cause to be operated privately owned and operated, but State licensed and generally regulated and supervised warehouses, also leased by the State warehouse superintendent, and forming component units of the State warehouse system,
- (3) All under and pursuant to the provisions of this article, subject to the United States Warehouse Act and lawful regulations issued thereunder.

(b) The State warehouse superintendent is authorized, and the owners, operators, officers, and employees of affiliated State licensed component units in the State warehouse system are directed, to comply with the said United States Warehouse Act and such lawful regulations as may be issued thereunder, by the federal

authorities, and such additional State rules and regulations which may be imposed, under and pursuant to this article, upon all parties concerned in the operation of the State warehouse system. (1921, c. 137, s. 19; C. S., s. 4925(s); 1965, c. 1029, s. 11.)

Editor's Note. — The 1965 amendment rewrote this section. Section 1 of the act sets out its purposes.

§ 106-450.1. Bond of State warehouse system under United States Warehouse Act.—Any bond required by the provisions of the United States Warehouse Act on behalf of the State warehouse system shall be procured in the name of, and shall show as the principal obligor thereon, the State of North Carolina and the obligations of such bond shall rest upon the State of North Carolina, acting through the State Board of Agriculture or the State warehouse superintendent on behalf of the State warehouse system. Any right of indemnity over as against the principal obligor for any loss under the bond by any surety, shall principally and primarily be directed against and encumber the State Warehouse Indemnifying or Guaranty Fund provided for under the terms and provisions of this article, including, but not restricted to, G.S. 106-435. Any cause of action arising out of or incidental to any bond furnished under and pursuant to the United States Warehouse Act shall be and constitute a claim and suit against the State of North Carolina, whether the State of North Carolina is designated as party defendant in any such action or not, and whether the action is brought against the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, the State warehouse system, the Treasurer of the State of North Carolina as custodian of the State Indemnity and Guaranty Fund, or any of them, or any individual holding an office or acting as agent of the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, the State warehouse system or other legal entity acting by and for the State or any of its agencies or instrumentalities in the execution of this article. There shall be no liability or cause of action against any individual acting as an officer, employee, agency or instrumentality of the State in the execution of this article under any bond furnished by the State under and pursuant to the United States Warehouse Act, except as in this article otherwise provided. (1965, c. 1038.)

ARTICLE 45.

Agricultural Societies and Fairs.

Part 3. Protection and Regulation of Fairs.

§ 106-516.1. Carnivals and similar amusements not to operate without permit.—Every person, firm, or corporation engaged in the business of a carnival company or a show of like kind, including menageries, merry-go-rounds, Ferris wheels, riding devices, circus and similar amusements and enterprises operated and conducted for profit, shall, prior to exhibiting in any county annually staging an agricultural fair, apply to the sheriff of the county in which the exhibit is to be held for a permit to exhibit. The sheriff of the county shall issue a permit without charge; provided, however, that no permit shall be issued if he shall find the requested exhibition date is less than thirty days prior to a regularly advertised agricultural fair and so in conflict with G. S. 105-39. Exhibition without a permit from the sheriff of the county in which the exhibition is to be held shall constitute a misdemeanor and be punished by a fine or imprisonment, or both, in the discretion of the court: Provided, that nothing contained in this section shall prevent veterans' organizations and posts chartered by Congress or organized and operated on a State-wide or nation-wide basis from holding fairs or tobacco

festivals on any dates which they may select if such fairs or festivals have heretofore been held as annual events. (1953, c. 854; 1963, c. 1127.)

Editor's Note.—The 1963 amendment inserted the word "circus" in the first sentence.

ARTICLE 49C.

Compulsory Meat Inspection.

§ 106-549.29. **Short title.**—This article shall be known and may be cited as the Compulsory Meat Inspection Act. (1961, c. 719.)

Editor's Note. — The act adding this article is effective as of Nov. 1, 1961.

§ 106-549.29:1. **Purpose generally; cost of administration.** — This article relates to the public health, safety and welfare, and provides for: The establishment of a meat inspection service, the inspection of meat and meat food products and the condemnation and destruction for food purposes of diseased, unsound or otherwise unfit meat or meat products, the prevention of misbranding and adulteration, the issuance of licenses, the adoption of regulations for the administration of the article and penalties for violations of the article. The cost of administering the provisions of this article shall be paid for by the State out of appropriated State funds. (1961, c. 719.)

§ 106-549.30. **Administered by Commissioner of Agriculture.**—This article shall be administered by the Commissioner of Agriculture of the State of North Carolina, hereinafter referred to as the "Commissioner." (1961, c. 719.)

§ 106-549.31. **Definitions.**—The following words, terms and phrases shall be construed for the purpose of this article as follows:

- (1) "Assistant State Supervisor" means a qualified, licensed veterinarian employed by the North Carolina Department of Agriculture to assist the State Supervisor.
- (2) "Commissioner" means Commissioner of Agriculture of North Carolina.
- (3) "Identity" means to apply official identification on the carcasses, primal parts, packages or containers thereof, with the inspection symbol "North Carolina Inspected and Passed" or approved abbreviation thereof. The inspection symbol shall further identify each official plant by a designated number.
- (4) "Inter-county" means across county boundary lines.
- (5) "Intra-county" means confined to one county; not crossing county lines.
- (6) "Meat" means the edible part of the muscle of cattle, sheep, swine, goats, or rabbits which is skeletal or which is found in the tongue, in a diaphragm, in the heart or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue, and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears.
- (7) "Meat by-product" means any edible part other than meat which has been derived from one or more cattle, sheep, swine, goats or rabbits.
- (8) "Meat food product" means any article of food, or any article intended for or capable of being used as food for human consumption which is derived or prepared, in whole or in substantial and definite part, from any permitted portion of any cattle, sheep, swine, goat or rabbit, except such articles as organic-therapeutic substance, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession; provided, that the Commissioner shall have the authority to prescribe a definition and identity

- for any food or class of food in which optional ingredients are permitted.
- (9) "Meat inspector" means a qualified person employed by the North Carolina Department of Agriculture, approved and designated for the purposes of inspecting meat, meat products, and meat by-products under the supervision of a veterinary inspector in an official plant.
 - (10) "Official identification" means a symbol such as a stamp, label, seal, or other device approved by the Commissioner, affixed to any carcasses, parts of carcasses, meat, meat by-products and meat food products that have been inspected and passed for wholesomeness.
 - (11) "Official plant" means a single plant comprised of one or more buildings or parts thereof, including equipment, premises, facilities and methods of operation which have been inspected and approved by the State Supervisor or his authorized representative as suitable and adequate for slaughtering animals, processing meat, meat products, and meat by-products, in accordance with this article and the rules and regulations promulgated thereunder.
 - (12) "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not, and every officer or authorized representative thereof.
 - (13) "Producer" means a person, firm or corporation growing livestock for human consumption, on his farm or farms controlled by him.
 - (14) "Qualified veterinarian" means a graduate of a school of veterinary medicine approved by the American Veterinary Medical Association or the United States Department of Agriculture.
 - (15) "Retailer" means any person, firm or corporation selling or offering for sale meat, meat products, or meat by-products on its own premises to the consumer.
 - (16) "Slaughtering establishment" means any person, firm or corporation slaughtering cattle, sheep, swine, goats or rabbits or processing meat, meat products, and meat by-products for sale for human consumption, or any person, firm or corporation operating a slaughterhouse or any meat packer, or any non-exempt producer, or any two or more such persons, firms or corporations acting in combination.
 - (17) "State Supervisor" means a qualified, licensed veterinarian employed by the North Carolina Department of Agriculture and appointed by the Commissioner.
 - (18) "Veterinary inspector" means a qualified veterinarian approved and designated by the State Supervisor employed by the North Carolina Department of Agriculture to inspect and supervise the inspection of meat, meat products, and meat by-products in an official plant. (1961, c. 719.)

§ 106-549.32. Compulsory inspection; duties and powers of Commissioner.—In order to provide consumers with a healthy and wholesome product and to properly regulate, supervise and promote the meat packing industry, it shall be the duty of the Commissioner to promote, regulate, and supervise a system of inspection of all slaughterhouses, packing houses, abattoirs, meat processors, and any other establishments processing meat and meat products in North Carolina. The Commissioner shall have supervision over all such establishments and he, or his authorized agent, is empowered and directed at all times to visit any establishment, place or premise where animals are slaughtered or prepared for food purposes. (1961, c. 719.)

§ 106-549.33. Rules and regulations.—The Board of Agriculture shall, from time to time, provide rules and regulations necessary for the efficient execution of the provisions of this article and all inspections and examinations made under this article shall be made in such a manner as described in the rules and

regulations provided by said Board, not inconsistent with the provisions of this article; provided, however, that in promulgating such rules and regulations, said Board shall give full consideration to the rules governing meat inspection of the United States Department of Agriculture. (1961, c. 719.)

§ 106-549.34. Exemptions.—(a) Intra-County Slaughtering Establishments.—Any slaughtering establishment whose commercial operations do not extend beyond the county boundary lines, shall be exempt from the provisions of this article; provided, however, when it appears to the Commissioner that any intra-county slaughtering establishment operations are a detriment to the public health, such an establishment may be brought within the provisions of this article.

(b) Individuals or Producers. — Any producer or individual who shall slaughter animals principally for his own domestic use or for that of his immediate family, or any individual who shall have animals slaughtered principally for himself for his own domestic use or that of his immediate family by an intra-county slaughtering establishment shall be exempt from the inter-county restrictions, and such slaughtering by an intra-county establishment shall not constitute inter-county operations within the provisions of this article.

(c) Cured Hams, Shoulders and Bacon.—The sale of country or country style cured hams, shoulders and bacon shall be exempt from the general provisions of the Compulsory Meat Inspection Law; provided, that the storing, handling and curing of such meat complies with the rules and regulations adopted by the Board of Agriculture.

(d) Federal Inspection.—Any person or firm operating and licensed under the inspection program of the United States Department of Agriculture shall be exempt from the provisions of this article.

(e) Curb Markets under Sponsorship of Home Demonstration Clubs.—Curb Markets operated under the sponsorship of Home Demonstration Clubs are exempt from the provisions of this article. (1961, c. 719.)

§ 106-549.35. Office of State Supervisor created; qualifications and duties; Assistant State Supervisor; veterinary inspectors and meat inspectors.—There is created the office of State Supervisor. The Commissioner of Agriculture shall appoint a qualified veterinarian to fill this office, who shall have had experience in meat inspection work in slaughtering establishments. The duties of the State Supervisor shall be to supervise the Compulsory Meat Inspection Program, enforce and efficiently carry out the provisions of this article and the rules and regulations of the Board of Agriculture so as to assure the public that only pure and wholesome meats are offered for sale. The Commissioner may appoint an Assistant State Supervisor, veterinary inspectors and meat inspectors who shall be responsible to the State Supervisor and who shall conduct ante mortem and post mortem inspections, enforce sanitary requirements, perform other duties necessary to conduct proper meat inspection and carry out the provisions of this article and the rules and regulations adopted thereunder. The salaries of the above named personnel shall be fixed in accordance with the State Personnel Act. (1961, c. 719.)

§ 106-549.36. Application for inspection; examination of establishment; assignment and use of official plant numbers.—Effective July 1, 1962, before a person shall engage in slaughtering meat food animals or manufacturing or processing meat food products, or by-products on an inter-county basis in this State, he shall first apply to the Commissioner for the inauguration of inspection service in the establishment where such meat or meat food animals are to be slaughtered or meat food products processed or manufactured. Such application shall be in writing, addressed to the Department of Agriculture, on blank forms which shall be furnished by said Department of Agriculture. In such application for inspection the applicant shall agree to comply with the provisions of this article, and the rules and regulations adopted hereunder and to

maintain said establishment in a clean and sanitary manner. Upon receipt of said application, the Commissioner or his authorized agent shall cause to be made an inspection of said establishment, and if found clean and sanitary, and if properly constructed, maintained and equipped to conduct its business in accordance with this article, and the rules and regulations adopted hereunder, the Commissioner or his authorized agent shall inaugurate inspection services therein and shall give to such establishment an official number, to be used to mark meat in this establishment, as provided in this article.

Such establishment shall thereafter be known as "Official Plant No. —", and it shall be illegal for any other plant to use the official number of the said plant.

On November 1, 1961, any person qualifying for meat inspection services may make application to the Commissioner, and said service shall be inaugurated as soon as practicable. (1961, c. 719.)

§ 106-549.37. Suspension or revocation of State meat inspection.—If any condition exists in any establishment which may affect adversely the wholesomeness of meat products prepared or processed at such establishments, the Commissioner may immediately suspend State meat inspection until the condition is remedied. The Commissioner may revoke State meat inspection from any establishment on ten days' notice to the operator thereof, if such operator, after having received written notice of such noncompliance, repeatedly and persistently fails to comply with the rules and regulations promulgated by the Commissioner or any provisions of this article. (1961, c. 719.)

§ 106-549.38. Procedure for revocation, suspension or denial of license; hearings; appeals.—In all proceedings for revocation, suspension or denial of a license, the licensee or applicant shall be given an opportunity to be heard and may be represented by counsel. The Commissioner shall give the licensee twenty days' notice in writing and such notice shall specify the charges or reasons for revocation, suspension or denial. The notice shall also state the date, time and place where such hearing is to be held. Such hearing shall be held at the Department of Agriculture, Raleigh, N. C., unless a different location be agreed upon.

The Commissioner may issue subpoenas to compel the attendance of witnesses, and/or the production of books, papers, records, and/or documents anywhere in the State. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath, which may be administered by the Commissioner. Testimony shall be taken in person or by deposition under such rules and regulations as the Board of Agriculture may prescribe. The Commissioner shall hear and determine the charges, make findings and conclusions upon the evidence produced, and file them in his office, and serve upon the accused a copy of such findings and conclusions.

The revocation or suspension of a license shall be in writing signed by the Commissioner or the Assistant Commissioner, stating the grounds upon which such order is based, and the aggrieved person shall have the right to appeal from such an order within twenty days after a copy thereof is served upon him to the superior court of the county in which the appellant's establishment is located, or to the Superior Court of Wake County. Trial on such appeal shall be de novo; provided, however, that if the parties so agree, it may be confined to a review of the record made at the hearing by the Commissioner.

An appeal shall lie to the Supreme Court from the judgment of the superior court, as provided in all other civil cases. (1961, c. 719.)

§ 106-549.39. Plant construction and equipment.— For the purpose of inspection and qualifying slaughterhouses, packing houses, abattoirs, meat processing plants and any other establishments manufacturing meat food, meat food by-products and meat products for licenses, the Board of Agriculture shall

have authority to adopt the necessary sanitary and meat inspection rules and regulations, pertaining to the construction, equipment and facilities of slaughter-houses, packing houses, abattoirs, meat processing plants, and any other establishments handling meat food or meat food by-products. Said rules and regulations shall, so far as practical be in conformity with the meat inspection division, agricultural research service, United States Department of Agriculture meat inspection rules and regulations. (1961, c. 719.)

§ 106-549.40. **Ante-mortem inspection.** — The Commissioner, or his authorized agents, shall require and provide for an ante-mortem examination and inspection by inspectors of all meat food animals before they are allowed to enter any State-inspected establishment in which such meat food animals are to be slaughtered and the meat thereof is to be sold and used within the State. Such ante-mortem inspection shall be made on the day of slaughter. All meat food animals which on such ante-mortem inspection are found to show symptoms of disease or in abnormal condition shall be set apart and final disposition of such animals shall be made by the veterinary inspector. The veterinary inspector shall dispose of such animals in conformity with the rules and regulations of the State Board of Agriculture whether such animals are released for slaughter, held as suspects or condemned. (1961, c. 719.)

§ 106-549.41. **Post-mortem inspection.**—The Commissioner, or his authorized agent, shall require and provide post-mortem inspection of all animals slaughtered for food purposes on the day of the slaughter in any and all establishments in the State of North Carolina. The head, tongue, tail, thymus glands, viscera, and other parts and blood used in the preparation of meat food, meat food products or by-products, or medicinal products, shall be inspected at the time of evisceration and retained in such a manner as to preserve their identity until after the post-mortem examination has been completed. All carcasses and parts thereof showing signs of disease shall have final inspection by the veterinary inspector and disposed of in conformity with the rules and regulations adopted by the Board of Agriculture. (1961, c. 719.)

§ 106-549.42. **Designation of times of inspection.** — Whenever the Commissioner, or his authorized agents, shall deem it necessary in order to furnish proper, efficient, and economical inspection of establishments and the proper inspection of meat food animals or meat, the Commissioner or his authorized agent may designate days and hours for the slaughter of meat food animals and the preparation of processing of meat at such establishments. The Commissioner or his agent, in making such designation of days and hours, shall give consideration to the recommendations of the various establishments throughout the State and the existing practices and methods used at said establishments, fixing the time for slaughter of meat food animals and the preparation or processing of meat thereof. (1961, c. 719.)

§ 106-549.43. **Fee required for inspections outside regular working hours; disposition of fees.**—The Commissioner, or his agents, shall not be required to furnish meat inspection, as herein provided, for more than eight hours in any one day, or in excess of forty hours in any one calendar week, or on Sundays or legal holidays except on payment to the Department by the operator of an establishment under inspection of an hourly fee for each hour of State meat inspection furnished over eight hours in any one day or in excess of forty hours in any calendar week or on Sundays and legal holidays. The Commissioner shall establish an hourly rate for such overtime at an amount sufficient to defray the cost of such inspection.

All fees received by the Department under this section shall be deposited in the general fund in the State Treasury, credited to the Department of Agri-

culture account, and continuously appropriated to the Department for the purpose of administration and enforcement of this article. (1961, c. 719.)

§ 106-549.44. Labeling and marking.—The Commissioner shall provide meat inspection stamps and assign establishment numbers to all slaughtering establishments, packing houses, abattoirs, meat processing plants, and any other establishments handling meat, meat by-products, or meat food by-products, which have been approved and granted State meat inspection service by the Commissioner, and the stamps shall contain the words "North Carolina Inspected and Passed", or words of similar import. The carcasses of all livestock slaughtered, together with the usual wholesale cuts thereof, and such meat and/or meat products in loose form, encased, packaged, or canned as may be designated by the Commissioner, shall be legibly marked or branded with an edible ink, or otherwise identified with the assigned stamp and identification number of the slaughterhouse, packing house, abattoir, meat processing plant, or other establishment handling meat, meat products, and meat food by-products, all in accordance with the rules and regulations adopted by the Commissioner. Such inspection legend shall be applied under the supervision of meat inspection personnel.

The inspection stamp shall be designed by the Board of Agriculture so as not to be in conflict with inspection stamps of the United States Department of Agriculture. (1961, c. 719.)

§ 106-549.45. Transportation of uninspected meat, etc.; transportation, sale, etc., of inspected meat; condemnation of products found unwholesome following removal from plant of origin.—No person shall transport inter-county, for the purpose of sale, any meat, meat by-product, or meat food product which is not properly labelled or marked as "N. C. Inspected and Passed" or "U. S. Inspected and Passed". Carcasses, parts of carcasses, meat, meat by-products, and meat food products, inspected and passed for wholesomeness by the North Carolina Department of Agriculture, may be transported, stored and sold at any place within the State of North Carolina, including any political subdivision thereof; provided, however, such products following removal from the plant of origin found to be unwholesome and unfit for human food during transportation, storage, or at any subsequent time, may be condemned as unwholesome and unfit for human food and disposed of as inedible products in accordance with the rules and regulations adopted by the Board of Agriculture. (1961, c. 719.)

§ 106-549.46. Reinspection; products containing muscle tissue of pork; use of dye, chemical preservatives, etc.—All meat, meat products or by-products in channels of trade, whether fresh, frozen, cured or otherwise prepared, even though previously inspected and passed, shall be subject to reinspection under this article and the rules and regulations as often as may be necessary in order to ascertain whether such food is sound, healthful, wholesome, and fit for human food. No meat product of any kind containing muscle tissue of pork, which is customarily eaten without cooking, shall be prepared for human consumption unless subjected to a temperature sufficient to destroy all live trichinae. No food shall contain any dye, chemical preservative or other substance which impairs its wholesomeness or which is not approved by the Commissioner or his authorized agent. (1961, c. 719.)

§ 106-549.47. Effect of article.—The provisions of this article shall be applied in such a manner as to maintain the support and cooperation of all State and local agencies dealing with animals, animal diseases and human diseases, and in no way shall this article restrict the authority given to the State Board of Health or any other agency under the General Statutes of North Carolina. (1961, c. 719.)

§ 106-549.48. **Penalties.**—Any person who shall violate any of the provisions of this article, or the rules and regulations adopted hereunder, shall be guilty of a misdemeanor and may be fined or imprisoned or both, in the discretion of the court. (1961, c. 719.)

ARTICLE 49D.

Compulsory Poultry Inspection.

§ 106-549.49. **Short title.**—This article shall be known, and may be cited as the Compulsory Poultry Inspection Act. (1961, c. 875.)

§ 106-549.50. **Purpose generally; cost of administration.** — This article relates to the public health, safety, and welfare and provides for: The establishment of a poultry inspection service, the inspection of poultry and poultry products and the condemnation and destruction for food purposes of diseased, unsound, or otherwise unfit poultry or poultry products, the prevention of misbranding and alteration, the issuance of licenses, the adoption of regulations for the administration of the article, and penalties for violation of the article. The cost of administering the provisions of this article shall be paid for by the State out of appropriated State funds. (1961, c. 875.)

§ 106-549.51. **Administered by Commissioner of Agriculture.** — This article shall be administered by the Commissioner of Agriculture of the State of North Carolina hereinafter referred to as "Commissioner." (1961, c. 875.)

§ 106-549.52. **Definitions.** — The following words, terms, and phrases shall be construed for the purpose of this article as follows:

- (1) "Board" means the North Carolina Board of Agriculture.
- (2) "Commissioner" means Commissioner of Agriculture of North Carolina.
- (3) "Inspector" means any person who is licensed to inspect and certify the condition and wholesomeness of poultry and poultry products in accordance with the provisions of this article or the rules and regulations promulgated hereunder.
- (4) "Official plant" means one or more buildings or parts thereof comprising a single plant with the facilities and methods of operation therein having been approved by the Commissioner as suitable and adequate for processing poultry in accordance with the rules and regulations of the Board.
- (5) "Person" means any individual, partnership, association, business trust, corporation or any organized group of persons, whether incorporated or not.
- (6) "Poultry" means any kind of domesticated bird, including, but not limited to, chickens, turkeys, ducks, pigeons, geese and guineas.
- (7) "Poultry products" means any giblets or edible part of dressed poultry other than eviscerated poultry or any article of food for human consumption which is prepared in part from any edible portion of dressed poultry or from any product derived wholly from such edible portion.
- (8) "Ready-to-cook poultry" means any dressed poultry from which the protruding pin feathers, vestigial feathers, (hair or down, as the case may be), head, shank, crop, oil glands, trachea, esophagus, entrails, reproductive organs, and lungs have been removed, and, with or without the giblets, is ready to cook without need of further processing. Ready-to-cook poultry also means any cut up or disjointed portion of poultry. (1961, c. 875.)

§ 106-549.53. Compulsory inspections; duties and powers of Commissioner.—In order to provide consumers with a healthy and wholesome product and to properly regulate, supervise, and promote the poultry processing industry, it shall be the duty of the Commissioner to promote, regulate and supervise a system of inspection of all poultry processing establishments, poultry slaughtering houses, and any other establishments which may slaughter, process or dress poultry or poultry products in North Carolina. The Commissioner shall have supervision over all such establishments, and he or his authorized agent is empowered and directed at all times to visit any establishment, place or premises where poultry is slaughtered, processed or dressed for food purposes. (1961, c. 875.)

§ 106-549.54. Rules and regulations.—The Board of Agriculture shall, from time to time, provide rules and regulations necessary for the efficient execution of the provisions of this article, and all inspections and examinations made under this article shall be made in such a manner as described in the rules and regulations provided by said Board, not inconsistent with the provisions of this article; provided, however, that in promulgating such rules and regulations, said Board shall give full consideration to the rules governing poultry inspection of the United States Department of Agriculture. (1961, c. 875.)

§ 106-549.55. Exemptions. — (a) Intra-County Slaughtering Establishments.—Any poultry slaughtering or processing establishment, whose commercial operations do not extend beyond the county boundary lines, shall be exempt from the provisions of this article; provided, however, when it appears to the Commissioner that any intra-county poultry slaughtering or dressing establishment operations are being handled or carried out in such volume as to affect, burden, or obstruct the movement of inspected poultry products in inter-county trade, or when it appears that such intra-county establishment is a detriment to the public health, such establishment may be brought within the provisions of this article.

(b) Individuals or Producers.—Any producer or individual who shall slaughter, process or dress poultry, principally for his own domestic use or for that of his immediate family, or any individual who shall have poultry slaughtered or dressed principally for himself for his own domestic use or for that of his immediate family by an intra-county poultry processing establishment, shall be exempt from the inter-county restrictions, and such slaughtering by an intra-county establishment shall not constitute inter-county operations within the provisions of this article.

(c) Federal Inspection.—Any person or firm operating and licensed under the inspection program of the United States Department of Agriculture shall be exempt from the provisions of this article.

(d) Curb Markets under Supervision of Home Demonstration Clubs.—Curb markets operated under the sponsorship of Home Demonstration Clubs are exempt from the provisions of this article. (1961, c. 875.)

§ 106-549.56. Office of State Supervisor created; qualifications and duties; Assistant State Supervisor; veterinary inspectors and poultry inspectors. — There is created the office of State Supervisor. The Commissioner of Agriculture shall appoint a qualified veterinarian to fill this office, who shall have had experience in poultry inspection work in slaughtering establishments. The duties of the State Supervisor shall be to supervise the Compulsory Poultry Inspection Program, enforce and efficiently carry out the provisions of this article and the rules and regulations of the Board so as to assure the public that only pure and wholesome poultry is offered for sale. The Commissioner may appoint an Assistant State Supervisor, veterinary inspectors and poultry inspectors who shall be responsible to the State Supervisor and who shall conduct ante-mortem and post-mortem inspections, enforce sanitary re-

quirements, perform other duties necessary to conduct proper poultry inspection and carry out the provisions of this article and the rules and regulations adopted hereunder. The salaries of the above-named personnel shall be fixed in accordance with the State Personnel Act. (1961, c. 875.)

§ 106-549.57. Application for inspection; examination of establishments; assignment and use of official plant numbers.—Effective on the first day of July, 1962, before a person shall engage in slaughtering, processing, or dressing poultry or poultry products on an inter-county basis in this State, he shall first apply to the Commissioner for the inauguration of inspection service in the establishment where such poultry or poultry products are to be slaughtered, processed or dressed. Such application shall be in writing, addressed to the Department of Agriculture on blank forms which shall be furnished by said Department of Agriculture. In such application for inspection, the applicant shall agree to comply with the provisions of this article and the rules and regulations adopted hereunder, and to maintain said establishment in a clean and sanitary manner. Upon receipt of said application, the Commissioner or his authorized agent shall cause to be made an inspection of said establishment and if found clean and sanitary and if properly constructed, maintained and equipped to conduct its business in accordance with this article and the rules and regulations adopted hereunder, the Commissioner or his authorized agent shall inaugurate inspection services therein and shall give to such an establishment an official number, to be used to mark or tag poultry and poultry products in this establishment, as provided in this article.

Such establishment shall thereafter be known as "Official Plant No.....", and it shall be illegal for any other plant to use the official number of the said plant.

On and after January 1, 1962, any person qualifying for poultry inspection services may make application to the Commissioner and said service shall be inaugurated as soon as is reasonably possible. (1961, c. 875.)

§ 106-549.58. Suspension or revocation of State poultry inspection.—If any condition exists in any establishment which may affect adversely the wholesomeness of poultry or poultry products prepared or processed at such establishments, the Commissioner may immediately suspend State poultry inspection until the condition is remedied. The Commissioner may revoke State poultry inspection from any establishment on twenty days' notice to the operator thereof, if such operator, after having received written notice of such non-compliance, repeatedly and persistently fails to comply with the rules and regulations promulgated by the Board or any provisions of this article. (1961, c. 875.)

§ 106-549.59. Procedure for revocation, suspension or denial of license; hearings; appeals.—In all proceedings for revocation, suspension or denial of the license, the licensee or applicant shall be given an opportunity to be heard and may be represented by counsel. The Commissioner shall give the licensee twenty days' notice in writing and such notice shall specify the charges or reasons for revocation, suspension or denial. The notice shall also state the date, time and place where such hearing is to be held. Such hearing shall be held at the Department of Agriculture, Raleigh, N. C., unless a different location be agreed upon.

The Commissioner may issue subpoenas to compel the attendance of witnesses, and/or the production of books, papers, records, and/or documents anywhere in the State. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath, which may be administered by the Commissioner. Testimony shall be taken in person or by deposition under such rules and regulations as the Commissioner may prescribe. The Commissioner shall hear and determine the charges, make findings and

conclusions upon the evidence produced, and file them in his office, and serve upon the accused a copy of such findings and conclusions.

The revocation or suspension of a license shall be in writing signed by the Commissioner, stating the grounds upon which such order is based, and the aggrieved person shall have the right to appeal from such an order within twenty days after a copy thereof is served upon him to the superior court of the county in which the appellant's establishment is located or to the Superior Court of Wake County. Trial on such appeal shall be *de novo*; provided, however, that if the parties so agree, it may be confined to a review of the record made at the hearing by the Commissioner.

An appeal shall lie to the Supreme Court from the judgment of the superior court, as provided in all other civil cases. (1961, c. 875.)

§ 106-549.60. Plant construction and equipment.—For the purpose of inspection and qualifying poultry slaughterhouses, poultry processing plants, and any other establishment processing or dressing poultry, or poultry products for licenses, the Board shall have authority to adopt the necessary sanitary and poultry inspection rules and regulations pertaining to the construction, equipment, and facilities of poultry slaughterhouses, poultry processing plants, and any other establishment dressing or handling poultry or poultry products. Said rules and regulations shall, so far as practical, be in conformity with the Poultry Inspection Division, Agricultural Marketing Service, United States Department of Agriculture Poultry Inspection Rules and Regulations. (1961, c. 875.)

§ 106-549.61. Ante-mortem inspection.—The Commissioner, or his authorized agent, shall require and provide for an ante-mortem examination and inspection by inspectors of all poultry before it is allowed in any State-inspected establishment in which such poultry is to be slaughtered, and the meat thereof is to be sold and used within the State. Such ante-mortem inspection shall be made on the day of slaughter. All poultry, which on such ante-mortem inspection is found to show symptoms of disease, or in abnormal condition, shall be set apart and final disposition of such poultry shall be made by the State Supervisor or his agent. The State Supervisor or his agent shall dispose of such poultry in conformity with the rules and regulations of the Board whether such poultry is released for slaughter, held as suspected of disease, or condemned. (1961, c. 875.)

§ 106-549.62. Post-mortem inspection.—The Commissioner, or his authorized agent, shall require and provide post-mortem inspection of all poultry slaughtered for food purposes on the day of the slaughter in every establishment having poultry inspection in the State. The head, viscera, and other parts and blood used in the preparation of food or food products shall be inspected at the time of the evisceration and retained in such a manner as to preserve their identity until after the post-mortem examination has been completed. All carcasses and parts thereof showing signs of disease shall have final inspection by the State Supervisor or his agent and disposed of in conformity with the rules and regulations adopted by the Board. (1961, c. 875.)

§ 106-549.63. Designation of times of inspection.—Whenever the Commissioner, or his authorized agent, shall deem it necessary in order to furnish proper, efficient and economical inspection of establishments and the proper inspection of poultry, the Commissioner, or his authorized agent, may designate days and hours for the slaughter of poultry and the preparation, processing, or dressing of poultry at such establishments. The Commissioner, or his agent, in making such designation of days and hours, shall give consideration to the recommendations of the various establishments throughout the State, and the existing practices and methods used at said establishments, fixing the time for

slaughter of poultry and the preparation, processing, or dressing of poultry thereof. (1961, c. 875.)

§ 106-549.64. Fee required for inspections outside the regular working hours; disposition of fees.—The Commissioner, or his authorized agent, shall not be required to furnish poultry inspection, as herein provided, for more than ten hours in any one day, or in excess of forty hours in any one calendar week, or on Sundays or legal holidays, except on payment to the Department by the operator of an establishment under inspection of an hourly fee for each hour of State poultry inspection furnished over ten hours in any one day or in excess of forty hours in any calendar week or on Sundays and legal holidays. The Commissioner shall establish an hourly rate for such overtime at an amount sufficient to defray the cost of such inspection.

All fees received by the Department under this inspection shall be deposited in the general fund in the State Treasury, credited to the Department of Agriculture account, and continuously appropriated to said Department for the purpose of administration and enforcement of this article. (1961, c. 875.)

§ 106-549.65. Labelling and marking. — The Commissioner shall design inspection stamps or tags or paper giblet wrappings and assign establishment numbers to all poultry slaughtering establishments, poultry processing and dressing plants, and any other establishments handling poultry or poultry product, which have been approved and granted State poultry inspection service by the Commissioner, and the stamps or tags or paper giblet wrappings shall contain the words "North Carolina Inspected and Passed", or words of similar import. The carcasses of all poultry slaughtered, together with the usual cuts thereof, and such poultry or products in loose form, encased, packaged, or canned, as may be designated by the Commissioner, shall be legibly marked or branded with an edible ink, or otherwise identified with the assigned stamp or tag or paper giblet wrapping and identification number of the slaughterhouse or processing and dressing plant or other establishment handling poultry, poultry products, all in accordance with the rules and regulations adopted by the Board. Such inspection legend shall be applied under the supervision of poultry inspection personnel.

The inspection stamp or tag or paper giblet wrapping shall be designed so as not to be in conflict with inspection stamps of the United States Department of Agriculture. (1961, c. 875; 1963, c. 1029.)

Editor's Note.—The 1963 amendment inserted the singular of the quoted expression at two places. inserted the singular of the quoted expression at two places.

§ 106-549.66. Transportation of uninspected poultry, etc.; transportation, sale, etc., of inspected poultry; condemnation of products found unwholesome following removal from plant of origin.—No person shall transport inter-county, for the purpose of sale, any poultry, or poultry product, which is not properly labelled or marked as "North Carolina Inspected and Passed", or "U. S. Inspected and Passed". Carcasses, parts of carcasses, and poultry products inspected and passed for wholesomeness by the North Carolina Department of Agriculture, may be transported, stored and sold at any place within the State of North Carolina, including any political subdivision thereof; provided, however, such products following removal from the plant of origin found to be unwholesome and unfit for human food during transportation, storage or at any subsequent time may be condemned as unwholesome and unfit for human food and disposed of as inedible products in accordance with the rules and regulations adopted by the Board. (1961, c. 875.)

§ 106-549.67. Reinspection; use of dye, chemical preservatives, etc.—All poultry and poultry products in channels of trade, whether fresh,

frozen, or otherwise prepared, even though previously inspected and passed, shall be subject to reinspection under this article, and the rules and regulations adopted by the Board as often as may be necessary in order to ascertain whether such food is sound, healthful, wholesome, and fit for human food. No food shall contain any dye, chemical or preservative or other substance which impairs its wholesomeness or which is not approved by the Commissioner or his authorized agent. (1961, c. 875.)

§ 106-549.68. **Effect of article.**—The provisions of this article shall be applied in such a manner as to maintain the support and co-operation of all State and local agencies dealing with poultry, poultry diseases, and human diseases, and in no way shall this article restrict the authority given to the State Board of Health or any other agency under the General Statutes of North Carolina. (1961, c. 875.)

§ 106-549.69. **Penalties.**—Any person who shall violate any of the provisions of this article or the rules and regulations adopted hereunder shall be guilty of a misdemeanor and may be fined or imprisoned, or both, in the discretion of the court. (1961, c. 875.)

ARTICLE 49E.

Disposal of Dead Diseased Poultry at Commercial Farms.

§ 106-549.70. **Disposal pit or incinerator.**—Every person, firm or corporation engaged in growing poultry, turkeys or other domestic fowl or products thereof for commercial purposes shall provide and maintain a disposal pit or incinerator of a size and design, approved by the Department of Agriculture, wherein all dead diseased poultry carcasses shall be disposed of in a manner to prevent the spread of disease; provided, that the provisions of this article shall not apply to growers of poultry, turkeys or other domestic fowl with flocks of two hundred (200) or less. (1961, c. 1197, s. 1.)

Editor's Note.—The act inserting this article is effective as of Jan. 1, 1962.

§ 106-549.71. **Penalty for violation.**—Any person, firm or corporation violating the provisions of this article shall, upon conviction, be fined or imprisoned in the discretion of the court. (1961, c. 1197, s. 2.)

ARTICLE 50.

Promotion of Use and Sale of Agricultural Products.

§ 106-564. **Collection of assessments; custody and use of funds.**—In the event two thirds or more of the farmers eligible for participation in such referendum and voting therein shall vote in favor of such assessment, then the said assessment shall be collected annually for the number of years set forth in the call for such referendum, and the collection of such assessment shall be under such method, rules and regulations as may be determined by the agency conducting the same; and the said assessment so collected shall be paid into the treasury of the agency conducting such referendum, to be used together with other funds from other sources, including donations from individuals, concerns or corporations, and grants from State or governmental agencies, for the purpose of promoting and stimulating, by advertising and other methods, the increased use and sale, domestic and foreign, of the agricultural commodity covered by such referendum. Such assessments may also be used for the purpose of financing or contributing toward

the financing of a program of production, use and sale of any and all such agricultural commodities. (1947, c. 1018, s. 15; 1951, c. 1172, s. 3; 1965, c. 1046, s. 1.)

Editor's Note.—

The 1965 amendment substituted "num-

ber of years" for "three years" near the beginning of the first sentence.

§ 106-566. Referendum as to continuance of assessments approved at prior referendum.—In the event the first such referendum or any subsequent referendum is carried by the votes of two thirds or more of the eligible farmers participating therein and assessments in pursuance thereof are levied annually for the period set forth in the call for such referendum, then the agency conducting such referendum shall in its discretion have full power and authority to call and conduct during the third year of such first period or the last year of any subsequent period another referendum in which the farmers and producers of such agricultural commodity shall vote upon the question of whether or not such assessments shall be continued for the next ensuing three years or continued for the next ensuing six years. (1947, c. 1018, s. 17; 1965, c. 1046, s. 2.)

Editor's Note. — The 1965 amendment substituted "the first such referendum or any subsequent referendum" for "such referendum" near the beginning of the section, substituted "period" for "three years" pre-

ceding "set forth," inserted "first period or the last year of any subsequent" and added "or continued for the next ensuing six years" at the end of the section.

Chapter 108.

Board of Public Welfare.

Article 1.

State Board of Public Welfare.

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108-10.1. Contracts with agencies or private organizations to act as agents of Board.

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108-73.21. State Fund for Medical Assist-
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Sec.
108-75.1. Combined tax levy.
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aid to dependent children cases.

ARTICLE 1.

State Board of Public Welfare.

§ 108 1. **Appointment, term of office, and compensation.**—There shall be appointed by the Governor seven members who shall be styled “The State Board of Public Welfare,” and at least one of such persons shall be a woman. The terms of office of the members of the Board shall be six years. Upon the expiration of the terms of office of the present members of the Board, the Governor shall appoint their successors as follows: Three members to be appointed on April first, one thousand nine hundred and forty-three and every six years thereafter; two members to be appointed on April first, one thousand nine hundred and forty-five and every six years thereafter; and two members to be appointed on April first, one thousand nine hundred and forty-seven and every six years thereafter. Any vacancy in the Board at present or which may hereafter arise from any cause whatsoever shall be filled for the residue of the term by appointment by the Governor. The Governor shall designate the chairman of the Board so selected, which chairmanship so designated may be changed as the Governor may deem best to promote the efficiency of the service. The members of the Board shall receive such per diem as is customary for State boards and commissions as provided for in G. S. 138-5, and they shall receive their necessary expenses: Provided, however, that the chairman of the said Board, when acting as a member of the State Board of Allotments and Appeal shall receive a per diem to be fixed by the Director of the Budget, together with actual expenses incurred in attending meetings. (1868-9, c. 170, s. 1; Code, s. 2331; Rev., s. 3913; 1909, c. 500; 1917, c. 170, s. 1 C. S., s. 5004; 1937, c. 319, s. 1; 1943, c. 775, s. 1; 1945, c. 43, s. 1; 1963, c. 392.)

Editor's Note.—

The 1963 amendment substituted “receive such per diem as is customary for State boards and commissions as provided for in G. S. 138-5, and” for “serve without

pay, except that” in the last sentence.

Cited in *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

§ 108-3. **Powers and duties of Board.**

- (15) To establish standards, provide rules and regulations for the operation of, and to inspect and license boarding homes, rest homes, or convalescent homes for persons who are aged or mentally or physically infirm and who are not related or connected by blood or marriage to the applicant for license when a charge is made for such care: Provided said homes care for two or more persons; and provided further that this subdivision shall not apply where said homes care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration. Such license shall be valid for one year from the date of issuance unless revoked earlier by the Board for cause. Such homes shall be under the supervision of the Board, and its agents may at any time visit and inspect the homes. Any individual or corporation who shall operate any such home without having first received such license from the Board shall be guilty of a misdemeanor. Licensing authority shall not apply to any institution established, maintained or operated by any unit of government nor to commercial inns

or hotels nor to any facility licensed by the State Board of Health under the provisions of G.S. 130-9 (e).

- (18) To make payments out of State and federal moneys available for the purpose of paying the costs of necessary day care of minor children of needy families in accordance with rules, regulations and standards established by the State Board of Public Welfare: Provided, that these rules, regulations and standards shall be consistent with the principle of obtaining maximum federal participation in the costs of such day care. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175.)

Editor's Note.—

The 1961 amendment struck out the words and figures "Medical Care Commission under the provisions of G. S. 131-126.1 (3) unless the facility receives public welfare funds," formerly appearing at the end of subdivision (15) and inserted in lieu thereof "State Board of Health under the provisions of G. S. 130-9 (e)."

The 1961 amendatory act provided that it should not apply to any facility operated by

or in conjunction with any hospital required to be licensed by the Medical Care Commission.

The first 1965 amendment added the second proviso at the end of the first sentence in subdivision (15). The second 1965 amendment added subdivision (18).

As only subdivisions (15) and (18) were affected by the amendments, the rest of the section is not set out.

§ 108-5. Inspection of county prisons; reports required.—The State Board shall have power to inspect county jails, county homes, and all prisons and prison camps and other institutions of a penal or charitable nature, and to require reports from sheriffs of counties, chiefs of police of cities and towns, and directors of public welfare and other county and municipal officers in regard to the conditions of jails or almshouses, or in regard to the number, sex, age, physical and mental condition, criminal record, occupation, nationality and race of inmates, or such other information as may be required by the State Board. The plans and specifications of all new jails and almshouses shall, before the beginning of the construction thereof, be submitted for approval to the State Board. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008; 1957, c. 86; 1961, c. 186.)

Editor's Note.—

The 1961 amendment substituted "directors" for "superintendents."

§ 108-9. Relatives ineligible to appointment in State institutions; payments to nursing, etc., homes owned, etc., by welfare or other officials, or their relatives, prohibited.

(b) No payment of any public welfare or public assistance funds derived from any source, federal, State, or local, shall be made for the care of any person in any nursing home or home for the aged or infirm owned or operated in whole, or in part by any of the following individuals:

- (1) A member of the State Board of Public Welfare, of any county board of public welfare, or of any board of county commissioners;
- (2) Any official or employee of the State Department of Public Welfare or of any county department of public welfare;
- (3) A parent, grandparent, child, grandchild, brother or sister of any person designated in subdivisions (1) and (2) of this subsection;
- (4) A spouse of any person designated in subdivisions (1) and (2) of this subsection;

- (5) A spouse of a parent, child, brother, or sister of any person designated in subdivisions (1) and (2) of this subsection. (1917, c. 170, s. 1; C. S., s. 5012; 1959, c. 715; 1965, c. 48.)

Editor's Note.—

As subsection (a) was not changed by the amendment, it is not set out.

(b). The 1965 amendment rewrote subsection

§ 108-10.1. Contracts with agencies or private organizations to act as agents of Board.—The State Board of Public Welfare is authorized and empowered to make arrangements and contracts with other State agencies or private organizations, including those governed by chapter 57 of the General Statutes, whereby such agencies or organizations can act as the agent of said State Board of Public Welfare in arranging for the providing of any or all of the services described and authorized by the provisions of chapter 108 of the General Statutes or for agreements with suppliers or for arrangements as to payments of suppliers. (1963, c. 1171.)

ARTICLE 2.

County Boards of Public Welfare.

§ 108-11. County welfare boards; appointment; duties.—Each of the several counties of the State shall have a county welfare board composed of three members who shall be appointed as follows: The board of county commissioners shall appoint one member who may be one of their own number to serve as ex-officio member of the county welfare board with the same powers and duties as the other two members, or they may appoint a person not of their own number to serve on the county welfare board; the State Board of Public Welfare shall appoint one member; and the two members so appointed shall select the third member. In the event the two members thus appointed are unable to agree upon the selection of the third member, such third member shall be appointed by the resident judge of the superior court of the district in which the county is situated.

The board of county commissioners of any county is hereby authorized at any time to increase the size of the county welfare board from three (3) members to five (5) members. The decision to increase the county welfare board shall be reported immediately to the State Board of Public Welfare. In the event that the county welfare board is increased to five (5) members, the said five (5) members shall be appointed as follows: The board of county commissioners shall appoint two (2) members, one or both of whom may be a member or members of the board of county commissioners to serve as ex officio members of the county welfare board with the same powers and duties as the other members, or the commissioners may appoint one or both members to the county welfare board from persons other than their own membership; the State Board of Public Welfare shall appoint two (2) members; and the four (4) members so appointed shall select a fifth member. In the event the four (4) members thus appointed are unable to agree upon the selection of the fifth member, such fifth member shall be appointed by the senior resident superior court judge of the district in which the county is situated.

Appointments of county welfare board members shall be made on or before the first day of July of the year in which the term of appointment expires, and shall be effective as of that date, and the terms of office shall be three years each. Appointments to fill vacancies shall be for the remainder of the term of office. Prior service on a county welfare board shall not disqualify any person for service under this article, but no member shall be eligible to serve more than two successive terms.

In the event that the county welfare board is composed of three (3) members, the term of the member appointed by the State Board of Public Welfare shall

expire on June 30, 1963, and triennially thereafter; the term of the member appointed by the county commissioners shall expire on June 30, 1965, and triennially thereafter; and the term of the third member shall expire on June 30, 1964, and triennially thereafter. In the event that the county welfare board is increased to five (5) members, the State Board of Public Welfare shall appoint an additional member for a term expiring simultaneously with the term of the existing member appointed by the county commissioners, and the county commissioners shall appoint an additional member for a term expiring simultaneously with the term of the existing member appointed by the State Board of Public Welfare; thereafter all appointments shall be for three (3) years upon the expiration of the term of any member. It is the intent of this provision relating to five-member boards to provide for the appointment of one (1) member by the board of county commissioners and one (1) member by the State Board of Public Welfare in each year except for every third year, when the fifth member is appointed.

In the event that a board of county commissioners, after having increased the county welfare board to five (5) members, desires to return to a three-member board, it may do so effective on July 1 next following the decision to reduce the size of the board to three (3) members. On the said July 1, the terms of one (1) member appointed by the State Board of Public Welfare and one (1) member appointed by the county commissioners shall thereupon cease. The term of the member appointed by the State Board whose term would have expired on June 30, 1965, or triennially thereafter, shall thereupon cease; and the term of the member appointed by the county commissioners whose term would have expired on June 30, 1966, or triennially thereafter, shall thereupon cease. Thereafter the terms of the three (3) remaining members shall expire as provided in the first sentence of the preceding paragraph.

The county welfare boards of the several counties shall have the duty of selecting the county director of public welfare, shall act in advisory capacity to county and municipal authorities in developing policies and plans in dealing with problems of dependency and delinquency, distribution of the poor funds, and with bettering social conditions generally, including co-operation with other agencies in placing indigent persons in gainful enterprises, shall prepare the administrative budget for the county welfare department for submission to and approval by the board of county commissioners, and shall have such other powers and duties as may be prescribed by law, particularly those set forth in the laws pertaining to old age assistance and aid to dependent children: Provided, that as to cases requiring immediate action to prevent undue hardship the county welfare board may at its discretion delegate to the director of public welfare authority to consider and process applications under these laws, and to determine eligibility for assistance, amount of such assistance; and date on which it shall begin. The board shall require that any action taken by the director pursuant to such delegated authority be fully reported to the board at its next meeting. The board of public welfare of each county shall at its next monthly meeting accept or reject or modify the action of the county director of public welfare made under the preceding proviso since the last monthly meeting of the county board of public welfare. The county welfare board shall meet with the director of public welfare and advise with him in regard to problems pertaining to his office, and the director of public welfare shall be the executive officer of the board and shall act as its secretary.

Two or more county boards of public welfare are hereby authorized to employ jointly a director of public welfare to serve the appointing counties. The appointing counties must agree as to what portion of the total salary of the director is to be paid by each of the counties he serves. All laws referring to county directors of public welfare shall be applicable to a county director of public welfare appointed to serve two or more counties.

Any member of a county board of public welfare is authorized to inspect and examine any papers, documents, data, case histories, clinical data, medical reports, or any records whatsoever on file in the office of the county director of public welfare, or in the custody of any case worker or agent or employee engaged in any service under any said county director of public welfare, which pertain in any manner to any applicant or applications for public assistance of any type or nature, as authorized by chapter 108 of the General Statutes, as amended. No member of a county board of public welfare shall disclose to anyone or make public any information acquired by him by virtue of such inspection of said records. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2.)

Local Modification.—Alexander, Cabarrus, Chatham, Columbus, Gaston: 1963, c. 247, s. 2½; Mitchell: 1963, c. 1031; Pender: 1963, c. 247, s. 2½; Stokes: 1963, c. 835; Watauga: 1963, c. 247, s. 2½.

By virtue of Session Laws 1963, c. 415, Wake should be stricken from the replacement volume.

Editor's Note.—

The 1961 amendment substituted "director" for "superintendent" in the present sixth and eighth paragraphs.

The first 1963 amendment inserted the seventh paragraph. The second 1963 amendment inserted new paragraph two and paragraphs four and five in lieu of former paragraph three.

The term "ex officio" is not used in this section in its technical sense. State ex rel. Pitts v. Williams, 260 N.C. 168, 132 S.E.2d 329 (1963).

What the General Assembly intended by the use of the term "ex officio" in this section is unclear. It may have been apprehensive as to the dual office holding provision of Art. XIV, § 7, of the Constitution of North Carolina. It may have intended to make plain that a county commissioner, when appointed and while serving as a member of the county welfare

board, was not entitled to additional compensation for such service. State ex rel. Pitts v. Williams, 260 N.C. 168, 132 S.E.2d 329 (1963).

A board of county commissioners is not required to appoint one of their own number to the county welfare board under this section, but by authorizing it to do so any question as to the legality of such appointment is removed. State ex rel. Pitts v. Williams, 260 N.C. 168, 132 S.E.2d 329 (1963).

Purpose of Provision that Term of One Member Shall Expire Each Year.—The obvious purpose of this section in providing that the term of one of the members shall expire each year is to give assurance there will always be at least two members of the county welfare board with prior knowledge and understanding of the board's functions, program and problems. State ex rel. Pitts v. Williams, 260 N.C. 168, 132 S.E.2d 329 (1963).

The expiration of the term of office of a county commissioner does not disqualify him from further service as a member of the county welfare board or create a vacancy in the board to which he had been appointed. State ex rel. Pitts v. Williams, 260 N.C. 168, 132 S.E.2d 329 (1963).

§ 108-12. Meetings of the board; compensation and expenses. — The county welfare boards so appointed shall meet immediately after their appointment and organize by electing a chairman, who shall serve for the term of his appointment, and shall forward notice of said chairman's election and the third member's appointment immediately to the State Board, and shall meet at least once a month with the director of welfare and advise with him in regard to problems pertaining to his office. Members of county boards of public welfare may at the discretion of the board of county commissioners receive a per diem not to exceed ten dollars (\$10.00) a day and actual expenses when attending official meetings; any such payments heretofore made are hereby validated. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C. S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320; 1961, c. 186.)

Editor's Note.—

The 1961 amendment substituted "director" for "superintendent" in line five.

§ 108-13. County director of welfare; appointment; salary. — On the first Monday in June, one thousand nine hundred and forty-one, or as soon thereafter as practical, the several county welfare boards shall appoint a director of public welfare for the county in accordance with the rules and regulations of the merit system plan adopted by the State Board of Public Welfare. In making such appointment the county board may reappoint the director of public welfare whose term expires on the thirtieth day of June one thousand nine hundred and forty-one and who was serving as director of public welfare prior to the first day of January one thousand nine hundred and forty, if such person is certified by the merit system supervisor as having passed the merit system examination on a qualifying basis; or the county board may appoint as director of public welfare any person who was employed by a county welfare department prior to the first day of January one thousand nine hundred and forty and who has been promoted to the duties and responsibilities of director if such person meets the minimum requirements of the position of director of public welfare and shall be certified by the merit system supervisor as having passed the merit system examination; or the county board may appoint as director of public welfare a person from an open competitive or promotional register as certified by the merit system supervisor. The director so appointed shall assume his duties on the first day of July, one thousand nine hundred and forty-one. All subsequent vacancies in the position of director of public welfare shall be filled by the county board from an open competitive or promotional register.

The county welfare board may dismiss a director of public welfare in accordance with the merit system rules of the State Board of Public Welfare and any director so dismissed shall have the right of appeal to the merit system council, as provided for in the merit system plan.

The county welfare board shall determine the salary to be paid the director of public welfare, in accordance with the merit system compensation plan, either at the time of his appointment or at such time as they may be in regular or called session for the purpose, and the salary shall be paid by the respective counties from federal, State and county funds: Provided, that in counties where financial conditions render it urgently necessary, the State Board may cause to be paid out of any State or federal fund available for the purpose, such portion of the salary of the director of welfare of any county as, in the discretion of the State Board, may be necessary. Levy of taxes for the special purpose of payment of the salary of the county welfare director is hereby authorized and directed. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; C. S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; 1957, c. 100, s. 1; 1961, c. 186.)

Editor's Note.—

The 1961 amendment substituted "di-

rector" for "superintendent" in the catch-line and in all of the paragraphs.

§ 108-14. Powers and duties of county welfare director.—The county director of public welfare shall have the following powers and duties:

(1961, c. 186.)

Editor's Note.—

The 1961 amendment substituted "director" for "superintendent" in the catch-line and in line two of the introductory

paragraph. As subdivisions (1)-(12) were not changed, they are not set out.

Quoted in *In re Custody of Simpson*, 262 N.C. 206, 136 S.E.2d 647 (1964).

§ 108-14.01. Special county attorneys for welfare matters; appointment or designation of another to perform duties; compensation and expenses.—The board of county commissioners of any county, with the approval of the county board of public welfare, may appoint a duly qualified and licensed attorney who shall serve as a special county attorney for the purposes of §§ 108-14.01 to 108-14.03. In lieu of appointing a special county attorney the board of county commissioners may designate the county attorney, the assistant district solicitor or the solicitor of any court in the county inferior to

the superior court as special county attorney and provide for him additional compensation for the performance of the duties imposed upon him as special county attorney. Such special county attorney shall serve as legal advisor to the county director of public welfare, the county board of public welfare and the board of county commissioners in public welfare matters, and provision for his compensation and other expenses may be made in the special tax levy for county welfare administration. Nothing in §§ 108-14.01 to 108-14.03 shall be construed as prohibiting any system or plan by which any county in the State may already have made specific arrangements for specialized legal services in the nature herein prescribed, or the authority of any county government to retain and compensate special legal counsel for the purposes of discharging all or some of the duties and responsibilities herein set forth, or to impair the validity of the expenditure of public funds for specialized legal services. (1959, c. 1124, s. 1; 1961, c. 186.)

Editor's Note. — The 1961 amendment substituted "director" for "superintendent" in line ten.

ARTICLE 2A.

Records of Persons Receiving Public Assistance.

§ 108-14.4. Unlawful uses of information disclosed; unlawful to fail to file list.—Except as provided in this article, it shall be unlawful for any person, firm or corporation, board, body, association or other agency of any kind whatsoever to solicit, disclose, receive, make use of or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list or lists of names or any list of names derived from the reports provided for by this article for commercial or political purposes of any nature, or for any purpose not directly connected with the administration of public assistance, and any person, firm, corporation, board, body or association violating any provision of this article prohibiting the use of the information appearing in the reports required by this article for commercial or political purposes, even though such information was at first legally obtained or disclosed under this article, shall be guilty of a misdemeanor. It shall be unlawful for any director of any county board of public welfare or any officer or agent of same to fail or refuse to file the lists required by this article. (1953, c. 882, s. 4; 1961, c. 186.)

Editor's Note. — The 1961 amendment substituted "director" for "superintendent" in line twelve.

ARTICLE 3.

Division of Public Assistance.

§ 108-16: Repealed by Session Laws 1963, c. 138.

Part 1. Old Age Assistance.

§ 108-20. Acceptance of federal grants.

Stated in State Bd. of Pub. Welfare v. Board of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

§ 108-23. State appropriation.

Stated in State Bd. of Pub. Welfare v. Board of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

§ 108-24. County fund.

The General Assembly has the power to impose the duty upon the counties to raise a part of the matching funds for Social Security payments. State Bd. of

Pub. Welfare v. Board of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

And County Is Not Relieved of Burden because Some Citizens Reside on Tax-Exempt Property.—The mere fact that some citizens of a county who receive payments from the welfare funds reside on property which is exempt from taxation does not relieve the county from the burden of matching federal funds imposed on it by the legislature. State Bd. of Pub. Welfare v. Board of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

County Which Consists Largely of In-

dian Reservation.—The fact that a large part of a county consists of an Indian reservation owned by the United States and exempt from taxation does not affect the duty of the county to pay its part of the matching funds for Social Security payments to Indians residing within its boundaries, there being no statutory provision impairing the rights of the Indians to benefits under the Social Security Act as implemented by statute in this State. State Bd. of Pub. Welfare v. Board of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

§ 108-30.1. Lien on real property.—There is hereby created a general lien, enforceable as hereinafter provided, upon the real property of any person who is receiving or who has received old age assistance, to the extent of the total amount of such assistance paid to such recipient from and after October 1, 1951. Before any application for old age assistance is approved under the provisions of this article, the applicant shall agree that all such assistance paid to him shall constitute a claim against him and against his estate, enforceable according to law by any county paying all or part of such assistance. Such agreement may be contained in the application signed by the applicant. Immediately after the approval of an old age assistance grant, a statement showing the name of the recipient and the date of approval of the application shall be filed in the office of the clerk of the superior court in the county of residence of the recipient and in each county in which such recipient then owns or later acquires real property. The statement shall be filed in the regular lien docket, showing the name of the county filing said statement as claimant, or lienor, and the name of the recipient as owner, or lienee, and same shall be indexed in the name of the lienee in the defendants', or reverse alphabetical, side of the cross-index to civil judgments; in said index the county shall appear as plaintiff, or lienor; no cross-index in the name of the county, or lienor, shall be required. From the time of filing, such statement shall be and constitute due notice of a lien against the real property then owned or thereafter acquired by the recipient and lying in such county to the extent of the total amount of old age assistance paid to such recipient from and after October 1, 1951. The lien thus established shall take priority over all other liens subsequently acquired and shall continue from the date of filing until satisfied: Provided, that no action to enforce such lien may be brought more than ten years from the last day for which assistance is paid nor more than three years after the death of any recipient and the failure to bring such action within said time shall be a complete bar against any recovery and shall extinguish the lien: Provided further, that no execution in enforcement of the lien shall be levied upon any real property, so long as such property is occupied as a homesite by the surviving spouse or by any minor dependent child of such recipient, or as a homesite by the recipient, or a dependent adult child of such recipient who is incapable of self-support because of total mental or physical disability: Provided, further, that the board of county commissioners and the county board of public welfare of the county in which the recipient resides, acting jointly and after investigation, shall have the authority to subordinate any lien created by this section to a mortgage or lien created against the property of such recipient for the necessary repairs or improvements on said property, whether title to said property is held by the recipient alone or by the entirety with his or her spouse.

The State Board of Public Welfare shall furnish to the county director of public welfare forms to be used which shall contain such information as is required to carry out the provisions of this section and such other information as may be prescribed by the said Board.

Each county department of public welfare shall notify all persons shown of record to be recipients of old age assistance as of the date of notice that all old age assistance grants paid from and after October 1, 1951, shall constitute a lien against the real property and a claim against the estate of each recipient. The notice may be given by letter mailed to the last known address of each recipient, but failure to give such notice shall not affect the validity of the lien.

Upon receipt of a statement signed by the director of public welfare, setting forth the total amount of old age assistance paid to a recipient from and after October 1, 1951, the clerk of the superior court may, after reasonable notice to the county attorney within the same calendar month in which said statement was executed, accept payment of the total sum set forth in said statement, tendered by said recipient or in his behalf, and cancel the lien of record. The clerk of the superior court shall, within the same calendar month, give the director of public welfare notice of the receipt of such payment and of the cancellation of the lien, and shall hold or disburse the funds so received as provided by law. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967.)

Editor's Note.—

The first 1961 amendment substituted "director" for "superintendent" in the second and fourth paragraphs.

The second 1961 amendment inserted beginning in line twenty-seven the words "and the failure to bring such action within said time shall be a complete bar against any recovery and shall extinguish the lien."

Section to Be Construed in Pari Materia with §§ 2-42 and 161-22.—The recording and indexing requirements of this section are less specific than those relating to deeds and judgments. They should be construed in pari materia with the recording and indexing provisions of §§ 2-42 and 161-22. *Cuthrell v. Camden County*, 254 N. C. 181, 118 S. E. (2d) 601 (1961)

§ 108-35. Removal to another county.—Any recipient who moves to another county in this State shall be entitled to receive assistance in the county to which he has moved, and the county welfare director of the county from which he has moved shall transfer all necessary records relating to the recipient to the county welfare director of the county to which he has moved. The county from which the recipient moves shall pay the assistance for a period of three months following such removal, and thereafter assistance shall be paid by the county to which such recipient has moved. (1937, c. 288, s. 20; 1943, c. 505, s. 3; 1961, c. 186; 1963, c. 136.)

Editor's Note.—

The 1961 amendment substituted "director" for "superintendent" in lines three and five.

The 1963 amendment deleted the words

"not in excess of amount paid before removal" formerly appearing after the word "removal" in the last sentence of the section.

§ 108-37. Allocation of funds.—As soon as may be practicable after receiving the said reports, and before the time for the annual levy of taxes in the respective counties, the State Board of Allotments and Appeal shall proceed to ascertain and determine the amount of State and federal funds available for disbursement in the counties for the purposes of this article for the next ensuing fiscal year. The Board shall, at the same time, determine the amount to be raised in each of the respective counties by taxation to supplement the State and federal funds allotted to such county. The allotment of State and federal funds to any county shall not exceed three times the amount to be raised in said county by local taxation, except as provided in § 108-73.

The determination of such amount by the Board of Allotments and Appeal shall be final and binding upon the several counties respectively, and shall be a part of the county budget. The county commissioners shall, at the time of levying other taxes, levy and impose upon all the taxable subjects within the county a tax sufficient to produce such amount; and the same shall be collected as other taxes.

The proceeds of such taxes shall be kept in a separate fund in the county treasury, and shall be subject to the provisions of the Local Government Act with respect to depository security and control, and shall be used only for the purposes of this article. It shall be the duty of the Board of Allotments and Appeal to inquire into the condition of the said fund from time to time and to require that such protection be afforded the funds as occasion may demand. The funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the secretary of the county welfare board, countersigned by the county auditor and chairman of the welfare board, for payments of grants to recipients: Provided, that in the event any temporary vacancy should exist in the office of county welfare director, or in the office of chairman of the county welfare board, the signature of either remaining officer together with that of the county auditor shall be sufficient for the disbursement of such funds. Warrants shall be drawn under this article for administrative purposes in accordance with the County Fiscal Control Act. (1937, c. 288, s. 22; 1939, c. 395, s. 1; 1943, c. 505, s. 4; 1955, c. 310, s. 1; 1961, c. 186.)

Editor's Note.—

The 1961 amendment substituted "director" for "superintendent" in line twelve of the third paragraph.

§ 108-38. Administration expenses.—The State Board of Allotments and Appeal shall annually allocate to the several counties of the State, in accordance with the total amount of benefit payments to be paid in each county for old age assistance therein, the sum provided by the federal government under the Social Security Act for payment of administrative expenses. Any amounts in excess of said allotments to the several counties, which are necessary to the proper administration of the public welfare program by the several counties, shall be determined by the State Board of Allotments and Appeal upon budgets submitted to said Board by the county welfare boards in each county. Said determination shall be made on or before the first day of June in each year.

After being so determined, an amount not to exceed one half of such costs shall be allocated and paid to the respective counties by the State Board of Allotments and Appeal from the appropriation made by the State for aid to county welfare administration. The balance of said county administrative expenses shall be paid by the respective counties. The State Board of Allotments and Appeal shall, on or before the first day of June in each year, notify the board of county commissioners in each county as to the amount of administrative expenses such county is required to provide, and upon receipt of such notice it shall be mandatory upon each county that taxes shall be levied within said county to provide for the payment of such part of such county's administrative expenses.

The county board of commissioners and the county board of welfare, in joint session, shall determine the number and salary of employees of the county board of welfare, having been advised by the county director of welfare and the State Board of Public Welfare; provided, however, that the members of the county boards of welfare shall not have a vote at such joint sessions. (1937, c. 288, s. 23; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1957, c. 100, s. 1; 1961, c. 186; 1963, c. 248, s. 1.)

Local Modification.—Cabarrus: 1963, c. 248, s. 2½.

Editor's Note.—

The 1961 amendment substituted "di-

rector" for "superintendent" in the third paragraph.

The 1963 amendment added the proviso at the end of the section.

§ 108-42. Fraudulent acts made misdemeanor.—Whoever knowingly obtains an initial award of assistance, assistance, a continuation of assistance after such initial award, or assistance greater than that to which he is justly entitled, initially or thereafter, when such person is ineligible and not entitled to such assistance, by means of willfully making a false statement or representation

knowing same to be false, or by means of failing to disclose a material fact, or by impersonation or by any fraudulent scheme, plan or device; or, whoever knowingly attempts to obtain or aids and abets any person to obtain an initial award of assistance, assistance, a continuation of assistance after such initial award, or assistance greater than that to which he is justly entitled, initially or thereafter, when such person is ineligible and not entitled to such assistance, by means of willfully making a false statement or representation knowing same to be false, or by failing to disclose a material fact or by any fraudulent scheme, plan, device, or impersonation, shall be guilty of a misdemeanor, and upon conviction, or plea of guilty, shall be fined or imprisoned, or both, at the discretion of the court. (1937, c. 288, s. 27; 1963, c. 1062.)

Editor's Note. — The 1963 amendment rewrote this section.

Part 2. Aid to Dependent Children.

§ 108-47. Acceptance of federal grants.

Stated in *State Bd. of Pub. Welfare v. Board of Comm'rs*, 262 N.C. 475, 137 S.E.2d 801 (1964).

§ 108-49. Dependent children defined.—The term “dependent child” as used in this article shall mean a child under twenty-one years of age who is living with his or her father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, adoptive father, adoptive mother, grandfather-in-law, great-grandfather, grandmother-in-law, great-grandmother, brother of the half-blood, brother-in-law, adoptive brother, sister of the half-blood, sister-in-law, adoptive sister, uncle-in-law, aunt-in-law, great-uncle, and great-aunt, in a place of residence maintained by one or more of such relatives as his or their own home or who is living in a foster home licensed by the State Board of Public Welfare; who has resided in the State of North Carolina for one year immediately preceding the application for aid; or who was born within the State within one year immediately preceding the application if the mother has resided in the State for one year immediately preceding the birth, and who has been deprived of parental support or care by reason of the death, physical or mental incapacity or continued absence from the home of a parent, and who has no adequate means of support. (1937, c. 288, s. 35; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1961, c. 533; 1965, c. 939, s. 1.)

Editor's Note.—

the State Board of Public Welfare.”

The 1961 amendment inserted after the word “home” in line nine the words “or who is living in a foster home licensed by

The 1965 amendment substituted “twenty-one” for “eighteen” near the beginning of this section.

§ 108-50. Conditions of eligibility.—The following conditions of eligibility for assistance under this part are hereby established:

- (1) No child having passed his sixteenth birthday shall be eligible for assistance if such child has the ability and capacity for gainful employment, unless the child is regularly enrolled and attending school or unless no gainful employment is available; Provided that no such child will be eligible for assistance during the summer months unless no gainful employment is available; provided further, that no child who is eighteen or more years of age shall be eligible for assistance unless he is a student regularly attending a high school and successfully pursuing a course of study leading to a high school diploma or its equivalent, or regularly attending and successfully pursuing a course of vocational or technical training designed to fit him for gainful employment.

- (2) No parent with whom a dependent child is living shall be made the payee of an assistance grant if such parent has the ability and capacity for gainful employment and is not employed (either on a part or full-time basis) unless the parent is needed in the home to provide continuous care for, or supervision over, a child or children in the home, or unless no gainful employment is available.
- (3) Any child or parent required by this section to engage in gainful employment, but for whom no gainful employment is available, shall be registered with an employment service and shall make reasonable and continuous efforts to find gainful employment. Proof of registration with an employment service shall be provided by the child or parent to the county welfare department. (1961, c. 998; 1963, c. 1061; 1965, c. 939, s. 2.)

Editor's Note.—This numbered section, formerly relating to eligibility to receive aid for a dependent child, was derived from Public Acts 1937, c. 288, s. 36, as amended by Public Acts 1941, c. 232, and was repealed by Session Laws 1945, c. 615, s. 2.

The 1961 act, inserting a section pertaining to cooperative arrangements with em-

ployment offices and the termination of federal aid, assigned it the same number as the former repealed section.

The 1963 amendment, effective July 1, 1963, rewrote this section.

The 1965 amendment added the second proviso in subdivision (1).

§ 108-64. Removal to another county.—Any resident who moves to another county and continues to have such dependent children in custody in this State shall be entitled to receive assistance in the county to which he has moved, and the county welfare director of the county from which he has moved shall transfer all necessary records relating to the recipient to the county welfare director of the county to which he has moved. The county from which the recipient moves shall pay the assistance for a period of three months following such removal, and thereafter assistance shall be paid by the county to which such recipient has moved. (1937, c. 288, s. 50; 1943, c. 505, s. 7; 1961, c. 186.)

Editor's Note.—

The 1961 amendment substituted “di-

rector” for “superintendent” in lines four and six.

§ 108-71. Fraudulent acts made misdemeanors.—Whoever knowingly obtains an initial award of assistance, assistance, a continuation of assistance after such initial award, or assistance greater than that to which he is justly entitled, initially or thereafter, when such person is ineligible and not entitled to such assistance, by means of willfully making a false statement or representation knowing same to be false, or by means of failing to disclose a material fact, or by impersonation or by any fraudulent scheme, plan or device; or, whoever knowingly attempts to obtain or aids and abets any person to obtain an initial award of assistance, assistance, a continuation of assistance after such initial award, or assistance greater than that to which he is justly entitled, initially or thereafter, when such person is ineligible and not entitled to such assistance, by means of willfully making a false statement or representation knowing same to be false, or by failing to disclose a material fact or by any fraudulent scheme, plan, device, or impersonation, shall be guilty of a misdemeanor, and, upon conviction, or plea of guilty, shall be fined or imprisoned, or both, at the discretion of the court. (1937, c. 288, s. 57; 1963, c. 1013.)

Editor's Note.—The 1963 amendment rewrote this section.

§ 108-72.1. Payment by State for welfare payments to certain Indian residents.—The State Board of Public Welfare is authorized and directed to set apart and reserve out of State welfare appropriations such an amount of funds which shall be found by the State Board of Allotments and Appeal to be

sufficient to pay the counties the amount of welfare payments, plus the amount of administrative costs incidental to such payments, which the counties are otherwise required to provide under the provisions of this chapter for making welfare payments to or for Indian residents of any federal reservation held in trust by the United States government for the benefit of Indians.

From the funds reserved out of State Welfare appropriations the State Board of Public Welfare shall pay amounts to the counties as the State Board of Allotments and Appeal shall determine are appropriate under the requirements of this section. Welfare payments and appropriations referred to in this section mean payments and appropriations for the purpose of old age assistance under G.S. 108-23, aid to dependent children under G.S. 108-52, aid to the permanently and totally disabled under G.S. 108-73.5, and medical assistance for the aged under G.S. 108-73.21. (1965, c. 708.)

Editor's Note.—The act adding this section became effective July 1, 1965.

§ 108-73. Equalizing fund.—The State Board of Allotments and Appeal is authorized and directed to set apart and reserve out of the appropriation authorized to be made by the State under § 108-23, relating to old age assistance, under § 108-52, relating to aid to dependent children, and under § 108-73.5, relating to aid to the permanently and totally disabled, and under § 108-73.21, relating to medical assistance for the aged, such an amount of said funds appropriated by the State to the respective funds as shall be found by the State Board of Allotments and Appeal to be necessary for the purpose of equalizing the burden of taxation in the several counties of the State, and the benefits received by the recipients of awards under this article, and such amount shall be expended and disbursed solely for the use and benefit of needy persons coming within the eligibility provisions of this article. Said amount shall be distributed to the counties according to the needs therein in conformity with the rules and regulations adopted by the State Board of Allotments and Appeal, producing, as far as practicable, a just and fair distribution thereof.

After determining the amount to be allotted to any county from such equalizing fund, the State Board of Allotments and Appeal shall determine the amount to be raised in such county by taxation to supplement the State and federal funds allotted to said county as in this article otherwise provided, and it shall be mandatory upon the boards of county commissioners in the several counties to annually levy taxes in accordance therewith. (1937, c. 288, s. 62; 1943, c. 505, s. 11; 1963, c. 551, ss. 1, 2; c. 599, s. 2; 1965, c. 409.)

Editor's Note.—

The first 1963 amendment inserted in the first paragraph the reference to § 108-73.5, relating to aid to the permanently and totally disabled. It also deleted two provisos at the end of the first paragraph. The second 1963 amendment inserted in the first paragraph the reference to §

108-73.21, relating to medical assistance for the aged.

The 1965 amendment substituted "needy persons coming within the eligibility provisions of this article" for "needy aged persons and dependent children coming within the eligibility provisions of this article" at the end of the first sentence.

Part 3. General Assistance.

§ 108-73.2. Acceptance of federal grants in aid; Part liberally construed.

Cited in *State Bd. of Pub. Welfare v. Board of Comm'rs*, 262 N.C. 475, 137 S.E.2d 801 (1964).

§ 108-73.4. Eligibility.—Assistance may be granted to any person who:

- (1) Is unable to earn a sufficient income and is without any resources to provide a subsistence compatible with decency and health; and

- (2) Is not an inmate of any public institution at the time of receiving assistance.

Applications for general assistance shall be made to the county director of public welfare who by and with the approval of the county welfare board shall determine whether aid is to be granted and the amount thereof.

The amount of assistance which any eligible person may receive shall be determined with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case, and in accordance with the rules and regulations of the State Board of Public Welfare. Insofar as funds will permit, such assistance shall be sufficient when added to all other income and resources to provide such person with a reasonable subsistence compatible with decency and health, but the principle of equitable treatment shall be followed in each county as provided in the rules and regulations of the State Board of Public Welfare. Assistance may be granted to any person or for any purpose coming within the provisions of this section and the rules and regulations of the State Board of Public Welfare not inconsistent herewith, although such person or purpose may not come within federal requirements governing the use of federal grants in aid for general assistance purposes. Applications for general assistance shall be handled in the manner prescribed by the rules and regulations of the said Board. (1949, c. 1038, s. 2; 1961, c. 186.)

Editor's Note. — The 1961 amendment substituted "director" for "superintendent" in line six.

§ 108-73.5. State General Assistance Fund.—A fund shall be created to be known as the "State General Assistance Fund." This Fund shall be created by appropriations made by the General Assembly and such grants as may be received from the federal government for this purpose. Such Fund shall be used exclusively for assistance to needy persons found to be eligible in accordance with the provisions of Part 3 of this article and the rules and regulations of the State Board of Public Welfare not inconsistent therewith.

The Treasurer of the State of North Carolina is hereby made ex officio Treasurer of the State General Assistance Fund herein established, including therein such grants in aid for general assistance as may be received from the federal government for administration and distribution in this State; and the said Treasurer is hereby designated as the proper officer to receive grants in aid from the federal government. The Treasurer shall keep the funds in a separate account, to be known as the "State General Assistance Fund," and shall be responsible therefor on his official bond: and the said funds shall be protected by proper depository security as other State funds. The said funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the director of public welfare, countersigned by the county auditor, for payments of grants to recipients: Provided, that in the event any temporary vacancy should exist in the office of county welfare director, the signature of the chairman of the county welfare board together with that of the county auditor shall be sufficient for the disbursement of such funds. Warrants shall be drawn under this article for administrative purposes in accordance with the County Fiscal Control Act (1949, c. 1038, s. 2; 1955, c. 310, s. 3; 1961, c. 186.)

Editor's Note.—

The 1961 amendment substituted "director" for "superintendent" in lines twelve and fourteen of the second paragraph.

§ 108-73.10a. Eligibility requirement for aid to the permanently and totally disabled; county medical review board. -- Assistance shall be granted under this section to any person who:

- (1) Is at least 18 years of age and under 65 years of age;

- (2) Has resided in this State for one (1) year immediately preceding application for assistance;
- (3) Has not sufficient income or other resources to provide reasonable subsistence compatible with decency and health;
- (4) Is not an inmate of a public institution or an institution for tuberculosis or mental diseases;
- (5) Is not a patient in a medical institution as a result of having tuberculosis or psychosis;
- (6) Is found to be permanently and totally disabled within the meaning of this section. A permanently and totally disabled person is one who because of a mental or physical impairment is according to the present diagnosis substantially precluded from doing any work. The impairment must be of major importance and must be a condition not likely to improve or which will continue throughout the lifetime of the individual; and
- (7) Is not receiving any public assistance from the State or from any political subdivision thereof, or any other type of federally aided public assistance.

For the purpose of determining whether or not applicants for assistance are permanently and totally disabled within the meaning of this section, the board of county commissioners of any county, with the approval of the county board of public welfare, may set up in the county a medical review board who shall review all medical examinations of applicants applying for assistance and certify their findings of disability to the State Board of Public Welfare in the manner and form prescribed by said State Board. (1963, c. 788.)

§ 108-73.11. County fund for aid to the permanently and totally disabled.—Annually, at the time other taxes are levied in each of the several counties of the State, there may be levied and imposed a special tax for the purpose of raising such an amount as shall be determined necessary by the respective boards of county commissioners of the State for the program of aid to the permanently and totally disabled to supplement the State and federal funds available for expenditure in said county for aid to the permanently and totally disabled. The amount so ascertained shall be an obligation of the county, and the taxes imposed shall be collectible as are other taxes, and it shall be understood that the said tax is levied for a special purpose. The taxes collected from such levy shall be deposited to the credit of the county aid to the permanently and totally disabled fund. The levy of the special tax herein provided for shall be permissive and the requirement under this article that the several counties annually levy and impose taxes to provide for such amounts as such counties are required to pay for aid to the permanently and totally disabled shall be construed to mean that such counties may provide the sums to be raised by them from any sources of county income or revenue (including borrowing in anticipation of collection of taxes) which may be available for use for such purposes by such counties. (1953, c. 891; 1963, c. 535.)

Editor's Note. — The 1963 amendment deleted the words and figures "not to exceed five cents (5¢) per one hundred dollars (\$100.00) assessed valuation" formerly appearing immediately after the words "special tax" near the beginning of the first sentence.

§ 108-73.12a. Lien on real property of recipients of aid to permanently and totally disabled.—There is hereby created a general lien, enforceable as hereinafter provided, upon the real property of any person who is receiving or who has received aid to permanently and totally disabled, to the extent of the total amount of such assistance paid to such recipient from and after October 1, 1963. Before any application for aid to the permanently and totally disabled is approved under the provisions of this article, the ap-

plicant shall agree that all such assistance paid to him shall constitute a claim against him and against his estate, enforceable according to law by any county paying all or part of such assistance. Such agreement may be contained in the application signed by the applicant. Immediately after the approval of an aid to the permanently and totally disabled grant, a statement showing the name of the recipient and the date of approval of the application shall be filed in the office of the clerk of the superior court in the county of residence of the recipient and in each county in which such recipient then owns or later acquires real property. The statement shall be filed in the regular lien docket, showing the name of the county filing said statement as claimant, or lienor, and the name of the recipient as owner, or lienee, and same shall be indexed in the name of the lienee in the defendants', or reverse alphabetical, side of the cross-index to civil judgments; in said index the county shall appear as plaintiff, or lienor; no cross-index in the name of the county, or lienor, shall be required. From the time of filing, such statement shall be and constitute due notice of a lien against the real property then owned or thereafter acquired by the recipient and lying in such county to the extent of the total amount of aid to the permanently and totally disabled paid to such recipient from and after October 1, 1963. The lien thus established shall take priority over all other liens subsequently acquired and shall continue from the date of filing until satisfied: Provided, that no action to enforce such lien may be brought more than ten (10) years from the last day for which assistance is paid nor more than three (3) years after the death of any recipient and the failure to bring such action within said time shall be a complete bar against any recovery and shall extinguish the lien: Provided further, that no execution in enforcement of the lien shall be levied upon any real property, so long as such property is occupied as a homesite by the surviving spouse or by any minor dependent child of such recipient, or as a homesite by the recipient, or a dependent adult child of such recipient who is incapable of self-support because of total mental or physical disability: Provided, further, that the board of county commissioners and the county board of public welfare of the county in which the recipient resides, acting jointly and after investigation, shall have the authority to subordinate any lien created by this section to a mortgage or lien created against the property of such recipient for the necessary repairs or improvements on said property, whether title to said property is held by the recipient alone or by the entirety with his or her spouse.

The State Board of Public Welfare shall furnish to the county director of public welfare forms to be used which shall contain such information as is required to carry out the provisions of this section and such other information as may be prescribed by the said Board.

Each county department of public welfare shall notify all persons shown of record to be recipients of aid to the permanently and totally disabled as of the date of notice that all aid to the permanently and totally disabled grants paid from and after October 1, 1963, shall constitute a lien against the real property and a claim against the estate of each recipient. The notice may be given by letter mailed to the last known address of each recipient, but failure to give such notice shall not affect the validity of the lien.

Upon receipt of a statement signed by the director of public welfare, setting forth the total amount of aid to the permanently and totally disabled paid to a recipient from and after October 1, 1963, the clerk of the superior court may, after reasonable notice to the county attorney within the same calendar month in which said statement was executed, accept payment of the total sum set forth in said statement, tendered by said recipient or in his behalf, and cancel the lien of record. The clerk of the superior court shall, within the same calendar month, give the director of public welfare notice of the receipt of such payment

and of the cancellation of the lien, and shall hold or disburse the funds so received as provided by law. (1963, c. 1085.)

§ 108-73.12b. Action to be taken upon termination of assistance to permanently and totally disabled person.—The county department of public welfare shall, within six (6) months after the termination of an aid to the permanently and totally disabled grant by reason of death or otherwise, examine the case record of such recipient, the tax records of the county, and, in case of termination because of death, the records relating to executors, administrators, collectors, or other personal representatives. If it appears from this examination or from any other information which has come to the attention of the department, (i) that such recipient does not own, or has not owned since the date of the filing of the aid to the permanently and totally disabled lien against such recipient's realty, any real property, and (ii) that such recipient does not own nor his estate consist of any personal property in excess of one hundred dollars (\$100.00), and (iii) in the case of termination because of death, that no executor, administrator, collector or other personal representative has been appointed, an entry shall be made in the case record reflecting the results of this examination. If it appears from this examination, from a subsequent examination, or from any other information which may come to the attention of the department, (i) that such recipient does own, or has owned since the date of the filing of the aid to the permanently and totally disabled lien against such recipient's realty, any real property, or (ii) that such recipient does own or his estate consists of personal property of a value in excess of one hundred dollars (\$100.00), or (iii) in case of termination by death, that an executor, administrator, collector, or other personal representative has been appointed, then the department shall furnish to the county attorney all available information concerning the property of the recipient, the name of the spouse of the recipient, the township in which the recipient resides or resided, the race of the recipient, the total amount of aid to the permanently and totally disabled received by the recipient from and after October 1, 1963, by or through the State and the several counties thereof, and the reason for termination of the aid to the permanently and totally disabled grant. Upon receipt of this information, the county attorney shall take such steps as he may determine to be necessary to enforce the claim or lien herein provided. If it be made to appear to the clerk of the superior court that the personal property of the estate of a deceased recipient of aid to the permanently and totally disabled does not exceed one hundred dollars (\$100.00) in value, a personal representative of such deceased recipient shall not be a necessary party to an action to enforce the aid to the permanently and totally disabled lien against such recipient's realty. Any funds remaining after satisfaction of such lien shall be paid into the office of the clerk of the superior court.

The claim against the estate of a recipient herein provided for shall have equal priority in order of payment with the sixth class under § 28-105 of the General Statutes: Provided, that no such claim shall be satisfied out of any real property in which the recipient had any legal or equitable interest so long as such property is occupied as a homesite by the recipient, the surviving spouse, any minor dependent child of such recipient, or by a dependent adult child of such recipient who is incapable of self-support because of total mental or physical disability. (1963, c. 1085.)

§ 108-73.12c. Disposition of funds recovered under §§ 108-73.12a and 108-73.12b.—The United States and the State of North Carolina shall be entitled to share in any sum collected under the provisions of §§ 108-73.12a and 108-73.12b, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient. The county enforcing the claim as herein provided and any other county within the State which has paid aid to the perma-

nently and totally disabled to such recipient shall share proratably in any sum collected. All sums collected shall be deposited in the county aid to the permanently and totally disabled fund and a report of such deposit made to the State Board of Public Welfare. All sums to which the United States or the State of North Carolina may become entitled under the provisions of §§ 108-73.12a and 108-73.12b shall be promptly paid or credited. All such sums to which the State may become entitled shall be deposited in the State Aid to the Permanently and Totally Disabled Fund and shall become a part of that Fund.

All necessary costs incurred in the collection of any claim shall be borne proratably by the United States, the State, and the county in proportion to the share of the sum collected to which each may be entitled: Provided, that neither the United States nor the State shall in any instance be chargeable for cost in excess of the sum received by it from the claim. Necessary costs of collection of any claim shall include all costs of services in the filing, processing, investigation, and collection of such claim. (1963, c. 1085.)

§ 108-73.12d. Fraudulent acts made misdemeanor; aid to the permanently and totally disabled. — Whoever knowingly obtains an initial award of assistance, a continuation of assistance after such initial award, or assistance greater than that to which he is justly entitled, initially or thereafter, when such person is ineligible and not entitled to such assistance, by means of willfully making a false statement or representation knowing same to be false, or by means of failing to disclose a material fact, or by impersonation or by any fraudulent scheme, plan or device; or, whoever knowingly attempts to obtain or aids and abets any person to obtain an initial award of assistance, a continuation of assistance after such initial award, or assistance greater than that to which he is justly entitled, initially or thereafter, when such person is ineligible and not entitled to such assistance, by means of willfully making a false statement or representation knowing same to be false, or by failing to disclose a material fact or by any fraudulent scheme, plan, device, or impersonation, shall be guilty of a misdemeanor, and, upon conviction, or plea of guilty, shall be fined or imprisoned, or both, at the discretion of the court. Whoever aids or abets in buying or in any way disposing of the property, either real or personal, of a recipient of assistance with the intent to defeat the purposes of this article, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court. (1963, c. 1024.)

Part 4. Hospitalization and Other Care of Assistance Recipients.

§ 108-73.13. Establishment of Fund.—In order to achieve economy and efficiency in the hospitalization of assistance recipients the State Board of Public Welfare is authorized and empowered to establish a special fund for the hospitalization of recipients of old age assistance, aid to dependent children, and aid to the permanently and totally disabled, and to establish reasonable rules and regulations necessary to carry out the provisions of Part 4 of this article. The fund shall be known as "The State Fund for the Hospitalization of Assistance Recipients," hereinafter referred to as the Fund. Disbursement from the Fund shall be made only for the purpose of providing necessary hospital care including in-patient and out-patient services, and for the purpose of providing necessary drugs for recipients, and their spouses when such spouses are included in the assistance budget group, of old age assistance, aid to dependent children, and aid to the permanently and totally disabled. Any balance in the Fund at the end of any fiscal year and at the end of any biennium shall remain in the Fund and shall not expire or revert. (1955, c. 969; 1963, c. 599, s. 3.)

Editor's Note. — The 1963 amendment inserted the words "including in-patient and out-patient services, and for the purpose of providing necessary drugs" in the third sentence

Repeal of Part.—Section 1, c. 1173, Ses-

sion Laws 1965, repeals Parts 4, 4A and 4B of this article and substitutes therefor a new Part 4 entitled "Medical Assistance," consisting of §§ 108-73.13 to 108-73.15, which is set out following this Part. Section 4 of c. 1173, Session Laws 1965, provides: "This act shall become effective only in the event that the Federal Social

Security Act is amended by Congress to provide a program of grants to states for medical assistance, and shall then only become effective upon the adoption of rules and regulations by the State Board of Public Welfare pursuant to this act, approved by the Governor and the Advisory Budget Commission."

§ 108-73.14. Determination of rate per recipient; payments into Fund.—The Fund shall consist of amounts paid monthly into the Fund on behalf of each recipient of old age assistance, aid to dependent children, and aid to the permanently and totally disabled out of monies appropriated to the State Board of Public Welfare for this purpose; monthly payments for each county for such recipients through deductions made by the State Board of Public Welfare from State funds due the county for assistance purposes; and federal matching funds paid to the State for each assistance category. The rate per recipient of monthly payments into the Fund shall be fixed from time to time by the State Board taking into consideration costs of hospitalization, including in-patient and out-patient services, and cost of drugs, the number of persons covered, the extent of hospitalization and drug needs of such persons, and the availability of State funds. After the recipient rates have been determined, the portion of such rates to be paid from federal matching funds shall be computed. Payment of the balance of such rates shall be borne equally by the State and the several counties. (1955, c. 969; 1963, c. 599, s. 3.)

Editor's Note. — The 1963 amendment inserted in the second sentence the words "including in-patient and out-patient services, and cost of drugs" and the words "and drug needs."

§ 108-73.15. Extent of payment for hospitalization and other care.—Persons eligible as hereinabove provided shall be entitled to have the costs of necessary hospitalization, including in-patient and out-patient services, and the costs of necessary drugs paid out of the Fund, in such amounts, and to the extent and in the manner determined from time to time to be feasible pursuant to the rules and regulations established by the State Board. Such rules and regulations shall be established on the basis of money available for the purpose, the number of assistance recipients, the experience with respect to the incidence of illness, disease, accidents, and other reasons among such recipients, causing them to require hospitalization and the costs thereof, the amounts which recipients require otherwise in order to maintain a subsistence compatible with decency and health, and any other similar factors considered relevant by the State Board. (1955, c. 969; 1963, c. 599, s. 3.)

Editor's Note. — The 1963 amendment inserted in the first sentence the words "including in-patient and out-patient services, and the costs of necessary drugs."

§ 108-73.17. Disbursement.—Claims for the cost of hospitalization, including in-patient and out-patient services, and for the cost of drugs shall be submitted by the county director of public welfare to the State Board of Public Welfare, in accordance with the rules and regulations of the State Board. Payments from the Fund shall be made only to hospitals licensed by the North Carolina Medical Care Commission, or licensed or approved according to the laws of another state, and to pharmacies, on warrants drawn on "The State Fund for the Hospitalization of Assistance Recipients" upon order of the State Board of Public Welfare evidenced by the signature of the Commissioner of Public Welfare. (1955, c. 969; 1959, c. 180; 1961, c. 186; 1963, c. 599, s. 3.)

Editor's Note.—The 1961 amendment substituted "director" for "superintendent" in the first sentence.

The 1963 amendment inserted the words "including in-patient and out-patient services, and for the cost of drugs" in the first sentence. It also inserted the words "and to pharmacies" in the second sentence.

§ 108-73.18. Acceptance of federal grants. — The provisions of the Federal Social Security Act, relating to grants-in-aid to the State for the hospitalization of public assistance recipients and for other types of medical care, and the benefits thereunder, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said Social Security Act, so that the intent to comply therewith shall be made effectual. (1955, c. 969; 1963, c. 599, s. 3.)

Editor's Note. — The 1963 amendment inserted the words "and for other types of medical care."

Cited in State Bd. of Pub. Welfare v. Board of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

Part 4. Medical Assistance.

§ 108-73.13. State Fund for Medical Assistance created; tax levy for counties' shares.—For the purpose of providing medical assistance and for the administration of an effective medical assistance program in North Carolina, the State Board of Public Welfare is hereby authorized and empowered to establish from federal, State and county appropriations available for the purpose a fund to be known as the State Fund for Medical Assistance, and to adopt rules and regulations under which payments are to be made out of said Fund in accordance with the provisions of this part. The nonfederal share may be divided between the State and the counties, in a manner consistent with the provisions of the Federal Social Security Act, except that the share allocated to the counties may not exceed the share allocated to the State. If a portion of the nonfederal share is allocated to the counties, the boards of county commissioners of the several counties shall levy, impose and collect the taxes required for the special purpose of medical assistance as provided in this part, in an amount sufficient to cover each county's share of medical assistance. (1965, c. 1173, s. 1.)

Editor's Note.—Section 1, c. 1173, Session Laws 1965, repeals Parts 4, 4A and 4B of this article, and substitutes therefor a new Part 4 entitled "Medical Assistance," consisting of this and the following two sections. Section 4 of c. 1173, Session Laws 1965, provides: "This act shall become effective only in the event that the

Federal Social Security Act is amended by Congress to provide a program of grants to states for medical assistance, and shall then only become effective upon the adoption of rules and regulations by the State Board of Public Welfare pursuant to this act, approved by the Governor and the Advisory Budget Commission."

§ 108-73.14. Payments from Fund.—From the Fund established herein, the State Board of Public Welfare may, within appropriations made for this specific purpose, pay or cause to be paid all or part of the cost of medical and other remedial care for any eligible person, when it is essential to the health and welfare of such person that such care be provided, and when the total resources of such person are not sufficient to provide the necessary care. Payments for the cost of hospitalization, including in-patient and out-patient services, shall be made only to hospitals licensed by the North Carolina Medical Care Commission, or licensed or approved according to the laws of another state. (1965, c. 1173, s. 1.)

§ 108-73.15. Acceptance of federal grants; right to choose provider of care or service.—All of the provisions of the Federal Social Security Act, as amended, providing grants to the states for medical assistance, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said Federal Social Security Act, so that the intent to comply therewith shall be made effectual. Nothing in this part or the regulations made pursuant hereto shall be construed to deprive a recipient of assistance of

the right to choose the licensed provider of the care or service made available under this part within the provision of the Federal Social Security Law. (1965, c. 1173, s. 1.)

Part 4A. Hospitalization and Other Care for the Medically Indigent.

§ 108-73.19. Contributions for indigent patients.—The State Board of Public Welfare, in accordance with the rules and regulations promulgated by the Board, is hereby authorized and empowered to make hospitalization payments, covering in-patient and out-patient services, for eligible medically indigent persons hospitalized in any hospital licensed by the Medical Care Commission or licensed or approved according to the laws of another state, who do not qualify for money payment under old age assistance, aid to dependent children or aid to the permanently and totally disabled. The State Board of Public Welfare is further authorized and empowered to pay for drugs for eligible medically indigent persons who do not qualify for money payments. The payments shall be established on the basis of money available for the purpose, taking into account the availability of federal matching funds and the State funds appropriated for the program, with the nonfederal share to be borne equally by the State and the several counties.

The State Board of Public Welfare shall promulgate rules and regulations for determining the indigency of the persons hospitalized or entitled to drugs and the basis upon which hospitals and pharmacies shall qualify to receive the benefits of this section.

Any unexpended balance remaining from the present annual appropriation for medically indigent patients shall forthwith be transferred from the Medical Care Commission to the State Board of Public Welfare.

All outstanding obligations existing under the rules and regulations of the Medical Care Commission at one dollar and a half (\$1.50) per day for medically indigent patients shall be transferred from the Medical Care Commission to the State Board of Public Welfare for payment. (1961, c. 138, s. 2; 1963, c. 599, s. 4.)

Editor's Note. — The act inserting §§ 108-73.19 and 108-73.20 is effective as of May 1, 1961.

The 1963 amendment inserted the words "covering in-patient and out-patient services" near the beginning of the first para-

graph. It also inserted the second sentence of the first paragraph and the words "or entitled to drugs" and "and pharmacies" in the second paragraph.

Repeal of Part.—See note to § 108-73.13.

§ 108-73.20. Acceptance of federal grants.—The State Board of Public Welfare is hereby authorized to accept any federal matching funds which may be made available to the State by the federal government for the purposes set forth under the provisions of this part. (1961, c. 138, s. 2.)

Part 4B. Medical Assistance for the Aged.

§ 108-73.21. State Fund for Medical Assistance for the Aged created.—For the purpose of providing medical assistance for the aged, over and beyond the medical assistance provided by Part 4 and Part 4A of this article, and for the administration of an effective medical assistance program for the aged in North Carolina, the State Board of Public Welfare is hereby authorized and empowered to establish from federal, State and county appropriations available for the purpose, a fund to be known as the State Fund for Medical Assistance for the Aged, and to adopt rules and regulations under which payments are to be made out of said Fund in accordance with the provisions of this part. The non-federal share shall be equally divided between the State and the counties, except as provided in G. S. 108-73, as amended. Annually, at the time other taxes are levied in each of the several counties of the State, there shall be levied and im-

posed a tax sufficient to cover the county's share and full authority is hereby given to the boards of county commissioners of the several counties to levy, impose and collect the taxes required for the special purpose of medical assistance for the aged as provided in this part. (1963, c. 599, s. 1.)

Repeal of Part.—See note to § 108-73.13.

§ 108-73.22. **Payments.** — From the Fund established herein, the State Board of Public Welfare may, within appropriations made for this specific purpose, pay or cause to be paid all or part of the cost of medical services for any person sixty-five years of age and over, when it is essential to the health and welfare of such aged person that medical services be provided, and when the total resources of such person are not sufficient to provide the necessary medical services. (1963, c. 599, s. 1.)

§ 108-73.23. **Acceptance of federal grants.**—All of the provisions of the Federal Social Security Act, as amended, providing grants to the states for hospitalization, medical assistance and other remedial care for needy aged persons, are hereby accepted and adopted, and the State Board of Public Welfare is hereby authorized and empowered to accept grants under the provisions of said act which are most beneficial to the State for providing medical assistance for aged persons as defined in said Federal Social Security Act. Nothing in this part or the regulations made pursuant hereto shall be construed to deprive a recipient of assistance of the right to choose the provider of the care or service made available under this part within the provisions of the Federal Social Security Law. (1963, c. 599, s. 1.)

General Provisions.

§ 108-75.1. **Combined tax levy.**—In lieu of levying separate special taxes for old age assistance, aid to dependent children, aid to the permanently and totally disabled, aid to the blind and welfare administration, the board of county commissioners of any county may combine any or all of these special taxes into a consolidated public assistance tax, which when combined with other available funds as provided in G. S. 108-75 shall be sufficient to meet the appropriations for these various programs and purposes: Provided that the appropriations and expenditures for each of these various programs and purposes shall be separately stated and accounted for. (1963, c. 866.)

§ 108-76.3. **Personal representatives for recipients of assistance; appointment authorized; procedure; removal; costs; appeals.**—If any otherwise qualified applicant for or recipient of old age assistance, aid to the permanently and totally disabled, or general assistance, or payee in the case of aid to dependent children, is or shall become unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, or, in the case of aid to dependent children, the payment is not being used for the children, a petition may be filed by the director of public welfare before the appropriate court under § 108-76.4, in the form of a verified written application for the appointment of a personal representative for the purpose of receiving and managing public assistance payments for any such recipient or payee, which application shall allege one or more of the above grounds for the legal appointment of such personal representative.

The court shall summarily order a hearing on the petition and shall cause the applicant or recipient to be notified at least five days in advance of the time and place for the hearing. Findings of fact shall be made by the court without a jury, and if the court shall find that the applicant for or recipient of old age or general assistance or aid to the permanently and totally disabled or the payee, in the case of aid to dependent children, is unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, or, in the case of aid to dependent children, the pay-

ment is not being used for the children, the court may thereupon enter an order embracing said findings and appointing some responsible person as personal representative of the applicant or recipient, or of the payee in the case of aid to dependent children, for the purposes set forth herein. The personal representative so appointed shall serve with or without bond, in the discretion of the court, and without compensation. He will be responsible for receiving the monthly assistance payment and using the proceeds of such payment for the benefit of the recipient of old age or general assistance or aid to the permanently and totally disabled, or in the case of aid to dependent children, for the application of the payment to the best interest of the children. Such personal representative shall be responsible to the court for the faithful discharge of the duties of his trust. The court may consider the recommendation of the director of public welfare in the selection of a suitable person for appointment as personal representative for the limited purposes of §§ 108-76.3 to 108-76.5. The personal representative so appointed may be removed by the court, and the proceeding dismissed, or another suitable personal representative appointed. All costs of court with respect to any such proceedings shall be waived.

From the order of the court appointing or removing such personal representative, an appeal may be had to the judge of superior court who shall hear the matter *de novo* without a jury. (1959, c. 1239, s. 1; 1961, c. 186.)

Editor's Note. — The 1961 amendment in line eight of the first paragraph and line substituted "director" for "superintendent" twenty of the second paragraph.

§ 108-76.6. Protective payments in certain aid to dependent children cases.—In addition to the use of personal representatives as authorized in G. S. 108-76.3 through G. S. 108-76.5, the State Board of Public Welfare is to adopt rules and regulations providing for the use of protective payments to the extent authorized by Title IV of the Federal Social Security Act, when it is determined that the payee in an aid to dependent children case fails to use the assistance funds for the purpose for which they were intended. (1963, c. 380.)

ARTICLE 5.

Regulation of Organizations and Individuals Soliciting Public Alms.

§ 108-84. Organizations, etc., exempted from article. — The provisions of this article shall not apply to any solicitation or appeal made by any church, or religious organization, school or college, fraternal or patriotic organization, or civic club located in this State when such appeal or solicitation is confined to its membership nor shall the provisions of this article apply to any locally indigenous organization, institution, association or agency having its own office, managing board, committee or trustees or chief executive offices located in or residing in a city or county from publicly soliciting donations or contributions within a city and the county or counties in which said city is located or within the county in which such an organization, institution, association or agency is located and operates; provided that nothing in this article shall apply to any solicitation or appeal by any church for the construction, upkeep, or maintenance of the church and its established organization or for the support of its clergy; provided further, that nothing in this article shall apply to any solicitation or appeal by any college holding membership in the North Carolina College Conference, and provided further, that nothing in this article shall apply to any solicitation or appeal by any nonpublic high school which offers at least the minimum high school course of study prescribed by the State Board of Education and which is accredited by the State Department of Public Instruction. (1939, c. 144, s. 2a; 1947, c. 572; 1963, c. 110; 1965, c. 990.)

Editor's Note. — The 1963 amendment added the next to last proviso. The 1965 amendment added the last proviso.

Chapter 109.

Bonds.

ARTICLE 5.

Actions on Bonds.

§ 109-36. Summary remedy on official bond.

Minor Interested in Fund Must Be Represented by Guardian Ad Litem. — Where a judgment for personal injuries in an action prosecuted by the father as next friend for his minor son is paid only in part, it is error for the court on the father's motion under this section to order the clerk to pay the father out of the

recovery the entire amount expended by the father for necessary medical treatment of the minor, when the minor is not represented by a disinterested guardian ad litem, since the interests of the father and the minor in the fund are antagonistic. *White v. Osborne*, 251 N. C. 56, 110 S. E. (2d) 449 (1959).

Chapter 110.

Child Welfare.

Article 2.

Juvenile Courts.

Sec.

- 110-25.1. Investigations and petitions involving certain neglected illegitimate children; hearings; disposition of children.
- 110-38. Medical examination and treatment of child; application for admission to center for mentally retarded.

Article 5.

Interstate Compact on Juveniles.

- 110-58. Execution of compact.

Sec.

- 110-59. Compact administrator.
- 110-60. Supplementary agreements.
- 110-61. Discharging financial obligations imposed by compact or agreement.
- 110-62. Enforcement of compact.
- 110-63. Additional procedure for returning runaways not precluded.
- 110-64. Proceedings for return of runaways under Article IV of compact; "juvenile" construed.

ARTICLE 1.

Child Labor Regulations.

§ 110-10. **Officers authorized to issue certificates.**—The employment certificate required by this article shall be issued only by county or city directors of public welfare in such form and under such conditions as may be prescribed by the State Department of Labor. (1937, c. 317, s. 10; 1961, c. 186.)

Editor's Note. — The 1961 amendment substituted "directors" for "superintendents."

§ 110-20. Penalties.

Cited in *Swaney v. Peden Steel Co.* 259 N. C. 551, 131 S. E. (2d) 601 (1963).

ARTICLE 2.

Juvenile Courts.

§ 110-21. Exclusive original jurisdiction over children.

Purpose.—

In accord with 1st paragraph in orig-

inal. See *State v. Frazier*, 254 N. C. 226, 118 S. E. (2d) 556 (1961).

Constitutional Rights of Child. — The question as to the extent to which a child's constitutional rights are impaired by a restraint upon its freedom has arisen many times with reference to statutes authorizing the commitment of dependent, incorrigible, or delinquent children to the custody of some institution, and the decisions appear to warrant the statement, as a general rule, that, where the investigation is into the status and needs of the child, and the institution to which he or she is committed is not of a penal character, such investigation is not one to which the constitutional guaranty of a right to trial by jury extends, nor does the restraint put upon the child amount to a deprivation of liberty within the meaning of the Declaration of Rights, nor is it a punishment for

crime. *State v. Frazier*, 254 N. C. 226, 118 S. E. (2d) 556 (1961), citing *In re Watson*, 157 N. C. 340, 72 S. E. 1049 (1911).

Abandoned Child.—Under this section, the clerk of the superior court, in his capacity as juvenile judge, has exclusive jurisdiction of an abandoned child under sixteen years of age. *In re Custody of Simpson*, 262 N.C. 206, 136 S.E.2d 647 (1964).

Exceptions to Jurisdiction, etc.—

The juvenile court, under this section, has exclusive original jurisdiction of a child under sixteen years of age "whose custody is subject to controversy" in all cases except those in which the superior court is given jurisdiction by § 17-39 or § 50-13. *In re Custody of Simpson*, 262 N.C. 206, 136 S.E.2d 647 (1964).

§ 110-22. Juvenile courts created; part of superior court; joint county and city courts.

Local Modification. — Stokes: 1965, c. 821.

§ 110-25.1. Investigations and petitions involving certain neglected illegitimate children; hearings; disposition of children.—When it appears from the birth certificates filed with the Bureau of Vital Statistics that a child has been born to an unwed mother who had previously given birth to two or more children out of wedlock, said Bureau shall forward copies of such birth certificates to the local health director of the county of such mother's residence; and whenever it shall come to the attention of any local official that a child has been born to a woman by a father other than her husband, which woman had previously given birth to two or more children out of wedlock, such local official shall furnish such information to the local health director of the county of residence of such woman. The local health director to whom such information may come, shall thereupon, by registered or certified mail, notify such mother that she is, or may be, subject to the provisions of this section, and shall instruct her to report to the county director of public welfare in the county of her residence for consultation and advice within fifteen (15) days after receipt of such letter. A copy of such letter shall be mailed to the county director of public welfare in the county of such mother's residence. If the mother fails to report to the county director of public welfare within fifteen (15) days following receipt of the letter, then the county director shall thereupon begin the investigation hereinafter required.

In the course of the consultation and advice hereinabove provided for, the county director of public welfare shall make, or cause to be made through his own staff or through the staff of a private social agency, an investigation for the purpose of determining if such child, and any other children living with such mother, are living under such conditions, or are under such improper or insufficient guardianship or control, as to endanger the health or general welfare of any such child or children, within the meaning of subdivision (2) of G. S. 110-21. If, upon such investigation, the county welfare director is of the opinion that such living conditions or surroundings, or such improper or insufficient guardianship or control of such child or children, are such as to endanger the health or general welfare of any such child or children, then said director or some person under his supervision, or the personnel of the private social agency hereinabove referred to, shall consult and advise with the mother of such child or children for the purpose and to the end that such conditions and surroundings be im-

proved, and proper and sufficient guardianship and control be established. If, after such consultation and advice with said mother, such director is of the opinion that the health or general welfare of any such child or children is and will continue to be in danger, then such director shall thereupon file with the court a verified petition stating the alleged facts which bring such child or children within the provisions of the section, which said petition shall also contain all other information required by the provisions of G. S. 110-25. Upon the filing of such petition, the issuance and service of summons and the making of any interlocutory orders shall be made in accordance with the provisions of G. S. 110-26, 110-27, and 110-28.

After having given due notice, as provided by G. S. 110-26, the court shall conduct a hearing in accordance with the provisions of G. S. 110-29, and if, upon said hearing, the court is satisfied that the health or general welfare of any such child or children is in danger, and that such child or children are in need of more suitable guardianship, then the court may thereupon take such action as, in its discretion, it deems proper and suitable, and as provided in G. S. 110-29, subdivisions (2), (3), (4) or (5). (1963, c. 1259.)

Editor's Note. — The act inserting this section became effective July 1, 1963.

§ 110-28. Service of summons.

Cited in *In re Custody of Simpson*, 262 N.C. 206, 136 S.E.2d 647 (1964).

§ 110-29. Hearing; disposition of child.—Upon the return of the summons or other process or after any child has been taken into custody, at the time set for the hearing, the court shall proceed to hear and determine the case in a summary manner. The court may adjourn the hearing from time to time and inquire into the habits, surroundings, condition and tendencies of the child so as to enable the court to render such order or judgment as shall best conserve the welfare of the child and carry out the objects of this article. In all cases the nature of the proceedings shall be explained to the child and to the parents or the guardian or person having the custody or the supervision of the child. At any stage of the case the court may, in its discretion, appoint any suitable person to be the guardian ad litem of the child for the purposes of the proceeding.

The court, if satisfied that the child is in need of the care, protection or discipline of the State, may so adjudicate, and may find the child to be delinquent, neglected, or in need of more suitable guardianship. Thereupon the court may:

- (1) Place the child on probation subject to the conditions provided herein after; or
- (2) Commit the child to the custody of a relative or other fit person of good moral character, subject, in the discretion of the court, to the supervision of a probation officer and the further orders of the court; or
- (3) Commit the child to the custody of the county department of public welfare of the county wherein said child has legal residence to be placed by said department in a suitable home as designated in subdivision (4) of this section. The county department of public welfare to which custody is awarded shall be responsible for the general oversight and supervision of the child and shall pay the cost of care for said child. The juvenile court taking jurisdiction shall have the authority to determine the legal residence of the child and to award custody of said child to the county welfare department of the county which has been determined by the court to be the legal residence of the child. Provided, however, that if it should appear to the judge of the juvenile court exercising jurisdiction over said child that the child might be

- a legal resident of some county other than the county in which said court is sitting, that the judge of said court shall not enter any final order pertaining to the custody of said child until at least ten days' notice shall have been given to the county welfare department of any county which shall appear to be the county of legal residence of said child. The county welfare department thus given ten days' notice shall have an opportunity to appear and show cause, if any it has, why the legal residence of said child should not be found to be in its county; or
- (4) Commit the child to a suitable institution maintained by the State or any subdivision thereof, or to any suitable private institution, society or association incorporated under the laws of the State and approved by the State Board of Public Welfare authorized to care for children, or to place them in suitable family homes; or
 - (5) Render such further judgment or make such further order of commitment as the court may be authorized by law to make in any given case.
 - (6) If a child of fourteen years of age be charged with a felony for which the punishment as now fixed by law cannot be more than ten years in prison his case shall be investigated by the probation officer and the judge of the juvenile court as provided for in this article, unless it appears to the judge of the juvenile court that the case should be brought to the attention of the judge of the superior court, in which case the child shall be held in custody or bound to the next term of the superior court as now provided by law. (1919, c. 97, s. 9; C. S., s. 5047; 1929, c. 84; 1957, c. 100, s. 1; 1963, c. 631.)

Editor's Note.—

The 1963 amendment rewrote subdivision (3) of this section.

§ 110-31. Probation officers; appointment and discharge; compensation.—The judge of the juvenile court in each county shall appoint one or more suitable persons as probation officers who shall serve under his direction. The appointment of such probation officers shall be approved by the State Board of Public Welfare.

The county director of public welfare shall be the chief probation officer of every juvenile court in his county and shall have supervision over the work of any additional probation officer which may be appointed. Provided, that in those counties which have a domestic relations court or a juvenile court with its own probation staff separate from the county department of public welfare, the chief probation officer duly appointed by the judge of such domestic relations court or juvenile court shall be the chief probation officer rather than the county director of public welfare and shall have supervision of all probation services authorized under this article.

The judge appointing any probation officer may discharge such officer for cause after serving such officer with a written notice, but no probation officer shall be discharged without the approval of the State Board of Public Welfare.

The judge appointing any probation officer may in his discretion determine that a suitable salary be paid and may, with the approval of the judge of the superior court, fix the amount thereof. Such salary so determined and so approved shall be paid by the board of county commissioners; but no person shall be paid a salary as probation officer without a certificate of qualification from the State Board of Public Welfare.

The State Board of Public Welfare shall establish rules and regulations pursuant to which appointments under this article shall be made, to the end that such appointments shall be based upon merit only.

The appointment of a probation officer shall be in writing and one copy of the order of appointment shall be delivered to the officer so appointed and another filed in the office of the State Board of Public Welfare. (1919, c. 97, s. 11; C. S., s. 5049; 1957, c. 100, s. 1; 1961, c. 186; 1963, c. 633.)

Editor's Note.—

The 1963 amendment added the proviso

The 1961 amendment substituted "director" for "superintendent" in line one of the second paragraph.

§ 110-31.1. Probation officers as members of county welfare staffs.—(a) By written agreement between the judge of the juvenile court and the county director of public welfare, all probation officers of the juvenile court may be regular employees of the county department of public welfare, attached to the staff of the department and responsible directly to the county director of public welfare as chief probation officer of the county. Upon the election or appointment of a judge of the juvenile court who is not a party to any agreement heretofore entered into under this section, a new agreement may be entered into as provided herein.

(b) When such agreement shall have been entered into, probation officers shall be employed and compensated in the same manner as all other employees of the county department of public welfare are employed and compensated. (1947, c. 94; 1961, c. 186.)

Editor's Note. — The 1961 amendment substituted "director" for "superintendent" in subsection (a).

§ 110-38. Medical examination and treatment of child; application for admission to center for mentally retarded.—The court, in its discretion, either before or after a hearing, may cause any child within its jurisdiction to be examined by one or more duly licensed physicians, who shall submit a written report thereon to the court. If it shall appear to the court that any child within the jurisdiction of the court is mentally retarded, the court may appoint a responsible person to make an application for the admission of such child to the appropriate center for the care and treatment of the mentally retarded, in accordance with the provisions of G. S. 122-70. No child shall be committed to such institution unless the parent or parents or the guardian or custodian of such child, if such there be, are given an opportunity for a hearing.

Whenever a child within the jurisdiction of the court and under the provisions of this article appears to the court to be in need of medical or surgical care a suitable order may be made for the treatment of such child in a hospital or otherwise, and the expense thereof, when approved by the court, shall be a charge upon the county or the appropriate subdivision thereof; but the court may adjudge that the person or persons having the duty under the law to support such child shall pay a part or all of the expenses of such treatment as provided in § 110-34 of this article. (1919, c. 97, s. 18; C. S., s. 5056; 1963, c. 1184, s. 34.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, rewrote the second sentence of the first paragraph.

§ 110-40. Appeals.

Stated in *In re Custody of Simpson*, 262 N.C. 206, 136 S.E.2d 647 (1964).

ARTICLE 3.

Control over Child-Caring Facilities.

§ 110-45. Institution has authority of parent or guardian.

Editor's Note. — The heading of this article accurately the provisions of all sections article has been changed to reflect more thereunder.

ARTICLE 5.

Interstate Compact on Juveniles.

§ 110-58. **Execution of compact.** — The Governor is hereby authorized and directed to execute a compact on behalf of this State with any other state or states legally joining therein in the form substantially as follows: The contracting states solemnly agree:

ARTICLE I. FINDINGS AND PURPOSES.

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformatory and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II. EXISTING RIGHTS AND REMEDIES.

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III. DEFINITIONS.

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV. RETURN OF RUNAWAYS.

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate,

and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer to whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety (90) days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being re-

turned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V. RETURN OF ESCAPEES AND ABSCONDERS.

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety (90) days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal

custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of the transportation costs of such return.

ARTICLE VI. VOLUNTARY RETURN PROCEDURE.

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(a) or Article V(a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII. COOPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES.

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a

probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII. RESPONSIBILITY FOR COSTS.

(a) That the provisions of Articles IV(b), V(b) and VII(d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(b), V(b), or VII(d) of this compact.

ARTICLE IX. DETENTION PRACTICES.

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X. SUPPLEMENTARY AGREEMENTS.

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody

of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

ARTICLE XI. ACCEPTANCE OF FEDERAL AND OTHER AID.

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize, the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

ARTICLE XII. COMPACT ADMINISTRATORS.

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII. EXECUTION OF COMPACT.

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or [of] execution to be in accordance with the laws of the executing state.

ARTICLE XIV. RENUNCIATION.

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present Article.

ARTICLE XV. SEVERABILITY.

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1963, c. 910, s. 1; 1965, c. 925, s. 1.)

Editor's Note. — The act from which this article was codified became effective July 1, 1963.

The 1965 amendment substituted "may hold a hearing" for "shall hold a hearing" near the beginning of the fifth sentence of

the first paragraph of subsection (a) of Art. IV, inserted "either with or without a hearing" near the beginning of the sixth sentence of that paragraph, substituted "may" for "shall upon request" in the last

sentence of the same paragraph, substituted "ninety (90)" for "thirty (30)" near the end of the first sentence of the second paragraph of subsection (a) of Art. IV, and rewrote subsection (c) of that article.

§ 110-59. Compact administrator.—Pursuant to said compact, the Governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the Governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this State hereunder. (1963, c. 910, s. 2.)

§ 110-60. Supplementary agreements.—The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service by this State, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. (1963, c. 910, s. 3.)

§ 110-61. Discharging financial obligations imposed by compact or agreement.—The compact administrator, subject to the approval of the Director of the Budget, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the compact or by any supplementary agreement entered into thereunder. (1963, c. 910, s. 4.)

§ 110-62. Enforcement of compact.—The courts, departments, agencies and officers of this State and subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions. (1963, c. 910, s. 5.)

§ 110-63. Additional procedure for returning runaways not precluded.—In addition to any procedure provided in Articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this State and the other respective party states for the return of any such runaway juvenile. (1963, c. 910, s. 6.)

§ 110-64. Proceedings for return of runaways under Article IV of compact; "juvenile" construed.—The judge of any court in North Carolina to which an application is made for the return of a runaway under the provisions of Article IV of the Interstate Compact on Juveniles shall hold a hearing thereon to determine whether for the purposes of the compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. The judge of any court in North Carolina finding that a requisition for the return of a juvenile under the provisions of Article IV of the compact is in order shall upon request fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding. The period of time for holding a juvenile in custody under the provisions of Article IV of the compact for his own protec-

tion and welfare, subject to the order of a court of this State, to enable his return to another state party to the compact pursuant to a requisition for his return from a court of that state, shall not exceed thirty (30) days. In applying the provisions of Article IV of the compact to secure the return of a runaway from North Carolina, the courts of this State shall construe the word "juvenile" as used in this Article to mean any male 16 years of age or under and any female 18 years of age or under. (1965, c. 925, s. 2.)

Chapter 111.

Commission for the Blind.

Article 1.

Organization and General Duties of Commission.

Sec.

- 111-12.1. Acceptance of private contributions for particular facilities authorized.
- 111-12.2. Contributions treated as State funds to match federal funds.
- 111-12.3. Rules and regulations as to receiving and expending contributions.

Article 2.

Aid to the Needy Blind.

Sec.

- 111-30. Personal representatives for certain recipients of aid to the blind.
- 111-31. Courts for purposes of sections 111-30 to 111-33; records.
- 111-32. Findings under section 111-30 not competent as evidence in other proceedings.
- 111-33. Sections 111-30 to 111-33 are not to affect provisions for payments for minors.

ARTICLE 1.

Organization and General Duties of Commission.

§ 111-3. Additional members of Commission for Blind; meeting place.—In addition to the members of the North Carolina State Commission for the Blind, as provided in § 111-1, there shall be three additional persons, to be appointed by the Governor within thirty days after March 20, 1937. The State Health Director, the Director of the North Carolina Employment Service, and the Commissioner of Public Welfare of North Carolina shall also be ex officio members of this Commission, and their term of office shall be contemporaneous with their tenure of office as State Health Director, Director of the North Carolina Employment Service, and Commissioner of Public Welfare. Of the three additional members, to be appointed by the Governor as herein provided, one shall be appointed for a term of five years, one for a term of three years, and one for a term of one year. At the expiration of the term of any member of the Commission, his successor shall be appointed for a term of five years. All meetings of the North Carolina State Commission for the Blind shall be held in the city of Raleigh or at some other location to be designated and fixed by the chairman of the Commission. (1937, c. 285; 1957, c. 1357, s. 20; 1965, c. 236.)

Editor's Note.—

The 1965 amendment added "or at some other location to be designated and fixed

by the chairman of the Commission" at the end of the section.

§ 111-12.1. Acceptance of private contributions for particular facilities authorized.—In addition to other powers and duties granted it by law, the North Carolina State Commission for the Blind is hereby authorized to accept contributions of funds made by any private individual, agency or organization even though a condition of the contribution may be that the funds be utilized for the establishment of a particular public or private nonprofit workshop, rehabilitation

center or other facility established for the purpose of providing training or employment for eligible blind persons. (1965, c. 906, s. 1.)

§ 111-12.2. Contributions treated as State funds to match federal funds.—The Commission is further authorized to treat any funds received in accordance with § 111-12.1 as State funds for the purpose of accepting any funds made available under federal law on a matching basis for the establishment of such facilities. (1965, c. 906, s. 2.)

§ 111-12.3. Rules and regulations as to receiving and expending contributions.—The Commission shall make all rules and regulations necessary for the purpose of receiving and expending any funds mentioned in §§ 111-12.1 to 111-12.3 which are consistent with the principle of obtaining maximum federal participation and in accordance with established budget procedures of the North Carolina Department of Administration. (1965, c. 906, s. 3.)

ARTICLE 2.

Aid to the Needy Blind.

§ 111-15. Eligibility for relief.

- (5) Who are not publicly soliciting alms in any part of the State, and who are not, because of physical or mental condition, in need of continuing institutional care. Provided, that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind; except that, in making such determination, the State agency shall disregard such earned income as will enable said agency to receive the maximum grants from the federal government for such purpose. (1937, c. 124, s. 4; 1951, c. 319, s. 3; 1961, c. 666, s. 1.)

Editor's Note.—

The 1961 amendment, effective July 1, 1962, deleted from the end of subdivision (5) the words and figures "the first fifty dollars (\$50.00) per month of earned income" and substituted in lieu thereof the

words "such earned income as will enable said agency to receive the maximum grants from the federal government for such purpose." As the rest of the section was not affected by the amendment only subdivision (5) is set out.

§ 111-17. Amount and payment of assistance; source of funds.—When the board of county commissioners is satisfied that the applicant is entitled to relief under the provisions of this article, as provided in § 111-14, they shall order necessary relief to be granted under the rules and regulations prescribed by the North Carolina State Commission for the Blind, to be paid from county, State and federal funds available, said relief to be paid in monthly payments from funds hereinafter mentioned.

At the time of fixing the annual budget for the fiscal year beginning July first, one thousand nine hundred thirty-seven and annually thereafter, the board of county commissioners in each county shall, based upon such information as they are able to secure and with such information as may be furnished to them by the North Carolina State Commission for the Blind, estimate the number of needy blind persons in such county who shall be entitled to aid under the provisions of this article and the total amount of such county's part thereof required to be paid by such county. All such counties shall make an appropriation in their budgets which shall be found to be ample to pay their part of such payments and, at the time of levying other taxes, shall levy sufficient taxes for the payment of the same. This provision shall be mandatory on all of the counties in the State. Such taxes so levied shall be and hereby are declared to be for this special purpose and levied with the consent of the General Assembly. Any court of competent jurisdiction is authorized by mandamus to enforce the foregoing

provisions. No funds shall be allocated to any county by the North Carolina State Commission for the Blind until the provisions hereof have been fully complied with by such county.

In case such appropriation is exhausted within the year and is found to be insufficient to meet the county's part of the amount required for aid to the needy blind, such deficiency may be borrowed, if within constitutional limitations, at the lowest rate of interest obtainable, not exceeding six per cent, and provision for payment thereof shall be made in the next annual budget and tax levy.

The board of county commissioners in the several counties of the State shall cause to be transmitted to the State Treasurer their share of the total amount of relief granted to the blind applicants. Such remittances shall be made by the several counties in equal monthly installments on the first day of each month, beginning July first, one thousand nine hundred thirty-seven. The State Treasurer shall deposit said funds and credit same to the account of the North Carolina State Commission for the Blind to be employed in carrying out the provisions of this article.

Within the limitations of the State appropriation, the maximum payment for aid to the blind is to be such as will make possible maximum matching funds by the federal government. (1937, c. 124, s. 6; 1961, c. 666, s. 3.)

Editor's Note. — The 1961 amendment deleted the words "but in no case in an amount to exceed thirty dollars per month" formerly appearing immediately after "Blind" in line four of the first paragraph. It also deleted "one fourth" form-

erly appearing before "part" in line seven of the second paragraph and line two of the third paragraph. The amendment substituted "their share" for "one fourth" in line two of the fourth paragraph and added the last paragraph.

§ 111-19. When applications for relief made directly to State Commission; transfer of residence. — If any person, otherwise entitled to relief under this article, shall have the residence requirements in the State of North Carolina, but no legal settlement in any one of the counties therein, his or her application for relief under this article shall be made directly to the North Carolina State Commission for the Blind, in writing, in which shall be contained all the facts and information sufficient to enable the said Commission to pass upon the merits of the application. Blank forms for such application shall be furnished by the North Carolina State Commission for the Blind. If the said Commission finds the applicant entitled to assistance within the rules and regulations prescribed by it, and consonant with the provisions of this article, relief shall be given to such person coming under the rules of eligibility to such extent as the North Carolina State Commission for the Blind may consider just and proper, but not in excess of the amounts specified in § 111-17. Payment of the benefits thus awarded, however, shall be made entirely out of the funds provided by the State, together with such funds which may be added thereto as federal grants in aid, and shall not be a charge upon the funds locally raised by taxation in the counties until such person shall have resided in some county for sufficient time to acquire a settlement therein; thereafter payments shall be made as in other cases.

Any recipient of aid to the blind who moves to another county in this State shall be entitled to receive aid to the blind in the county to which he has moved, and the board of county commissioners, or its authorized agent, of the county from which he has moved shall transfer all necessary records relating to the recipient to the board of county commissioners, or its authorized agent, of the county to which he has moved. The county from which the recipient moves shall pay the aid to such recipient for a period of three months following such removal, and thereafter aid to such recipient shall be paid by the county to which such recipient has moved subject to the rules and regulations of the North Carolina State Commission for the Blind. (1937, c. 124, s. 8; 1947, c. 374; 1965, c. 905.)

Editor's Note.—

The 1965 amendment deleted "not in excess of the amount paid before removal"

following "such removal" in the last sentence of the second paragraph.

§ 111-30. Personal representatives for certain recipients of aid to the blind.—If any otherwise qualified applicant for or recipient of aid to the blind is or shall become unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, a petition may be filed by a relative of said blind person, or other interested person, or by the Director of Public Welfare before the appropriate court under § 111-31, in the form of a verified written application for the appointment of a personal representative for the purpose of receiving and managing public assistance payments for any such recipient, which application shall allege one or more of the above grounds for the legal appointment of such personal representative.

The court shall summarily order a hearing on the petition and shall cause the applicant or recipient to be notified at least five days in advance of the time and place for the hearing. Findings of fact shall be made by the court without a jury, and if the court shall find that the applicant for or recipient of aid to the blind is unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, the court may thereupon enter an order embracing said findings and appointing some responsible person as personal representative of the applicant or recipient for the purposes set forth herein. The personal representative so appointed shall serve with or without bond, in the discretion of the court, and without compensation. He will be responsible for receiving the monthly assistance payment and using the proceeds of such payment for the benefit of the recipient of aid to the blind. Such personal representative shall be responsible to the court for the faithful discharge of the duties of his trust. The court may consider the recommendation of the Director of Public Welfare in the selection of a suitable person for appointment as personal representative for the limited purposes of §§ 111-30 to 111-33. The personal representative so appointed may be removed by the court, and the proceeding dismissed, or another suitable personal representative appointed. All costs of court with respect to any such proceedings shall be waived.

From the order of the court appointing or removing such personal representative, an appeal may be had to the judge of superior court who shall hear the matter de novo without a jury. (1945, c. 72, s. 4; 1953, c. 1000; 1961, c. 666, s. 2.)

Editor's Note.—

The 1961 amendment repealed the

former section and replaced it by this and the following three sections.

§ 111-31. Courts for purposes of sections 111-30 to 111-33; records.—For the purposes of §§ 111-30 to 111-33 the court may be either a domestic relations court established pursuant to article 13, chapter 7, General Statutes, or the clerk of the superior court in the county having responsibility for the administration of the particular aid to the blind payments. The court may, for the purposes of §§ 111-30 to 111-33, direct the Director of Public Welfare to maintain records pertaining to all aspects of any personal representative proceeding, which the court may adopt as the court's record and in lieu of the maintenance of separate records by the court. (1961, c. 666, s. 2.)

§ 111-32. Findings under section 111-30 not competent as evidence in other proceedings.—The findings of fact under the provisions of § 111-30 shall not be competent as evidence in any case or proceeding dealing with any subject matter other than provided in §§ 111-30 to 111-33. (1961, c. 666, s. 2.)

§ 111-33. Sections 111-30 to 111-33 are not to affect provisions for payments for minors.—Nothing in §§ 111-30 to 111-33 is to be construed as affecting that portion of the State plan for aid to the blind which provides that payments for eligible blind minors should be made to the parent, legal

guardian, relatives or other persons "in loco parentis" of the blind minor, and that payments may be made to the minor if he is emancipated. (1961, c. 666, s. 2.)

Chapter 112.

Confederate Homes and Pensions.

ARTICLE 2.

Pensions.

Part 6. Miscellaneous Provisions.

§ 112-35. Peddling without license.

Quoted in *Eastern Carolina Taste-Freez, Inc. v. Raleigh*, 256 N. C. 208, 123 S. E. (2d) 632 (1962).

Chapter 113.

Conservation and Development.

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SUBCHAPTER II. STATE FORESTS AND PARKS.

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- 113-59. Co-operation between counties and State in forest protection and development.
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- 113-120.5. Liability of persons allowing others to use premises for certain purposes limited.
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SUBCHAPTER IV. FISH AND FISHERIES.

(This subchapter IV is repealed effective Jan. 1, 1966.)

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- 113-136. Regulations as to fish, fishing, and fisheries.
113-136.1. Closing public oyster bottoms, shrimp breeding areas and polluted areas; taking oysters and shrimp for personal use and

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Article 14.

Licenses for Fishing in Inland Waters.

113-143. Fishing licenses for persons above 16 years of age; exception as to guests at private ponds.

113-146.1. Boundary water exemptions.

113-152. Licenses to be kept about person of licensees; use of bow nets by persons other than licensee.

Article 15A.

Licenses and Taxes on Commercial Fisheries.

113-174.7. Regulation and licensing of commercial fishing boats.

113-174.8. Taking of seafood for personal or family use and consumption.

Article 15B.

Commercial License Regulations.

113-174.9. Printed regulations furnished.

113-174.15. Operation of boat or appliance in violation of rules or laws; revocation of license; seizure of boat and apparatus.

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Shellfish; General Laws.

113-176. Board may lease or decline to lease; applicants to certify as to commercial purposes.

113-181. Term and rental; cancellation of lease.

113-210.2. Transportation of unlawful fishing devices upon commercial fishing boats.

113-211. Unloading at factory or to a conveyance on Sunday or at night.

Article 25A.

Revocation of Commercial Fisheries Licenses.

113-377.01. Revocation for conviction of violation of certain statutes or rules and regulations of the Board of Conservation and Development.

SUBCHAPTER IV. CONSERVATION OF FISHERIES RESOURCES.

This subchapter IV is not effective until Jan. 1, 1966.)

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SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

ARTICLE 1.*Organization and Powers.*

§ 113-4. **Board of Conservation and Development.** — The control and management of the Department shall be vested in a board to be known as the "Board of Conservation and Development," to be composed of twenty-four mem-

bers. (1925, c. 122, s. 5; 1927, c. 57, s. 3; 1941, c. 45; 1961, c. 197, s. 1; 1965, c. 826, s. 1.)

Editor's Note. — The 1961 amendment increased the membership from fifteen to twenty-eight.

The 1965 amendment substituted "twenty-four members" for "twenty-eight members" at the end of this section.

Cited in *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

§ 113-5. Appointment and terms of office of Board. — The terms of office of the members of the Board of Conservation and Development now serving in such capacity shall expire at midnight on the 30th day of June, 1965. On the 1st day of July, 1965, the Governor shall appoint twenty-four persons to be members of the Board of Conservation and Development. Twelve members shall be appointed to serve for terms of two years each, and twelve members shall be appointed to serve for four years each. Thereafter, upon the expiration of their respective terms, the successors of said members shall be appointed for terms of four years each. All members appointed to the Board shall serve for the duration of their respective terms and until their successors are appointed and qualified. Any vacancy occurring in the membership of said Board because of death, resignation or otherwise shall be filled by the Governor for the unexpired term of such member. In making the appointments, the Governor shall take into consideration the functions and activities of the Board and in selecting the members shall give, as nearly as possible, proportionate representation to each and all of such functions and activities of the Department. (1925, c. 122, s. 5; 1927, c. 57, s. 3; 1941, c. 45; 1945, c. 638, s. 1; 1953, c. 81; 1957, c. 1428; 1961, c. 197, s. 2; 1965, c. 826, s. 2.)

Editor's Note.—

The 1961 amendment changed the date from 1953 to 1961 and eliminated the provision for six year terms.

The 1965 amendment substituted

"1965" for "1961" in the first and second sentences, "twenty-four" for "twenty-eight" in the second sentence, and "twelve" for "fourteen" twice in the third sentence.

§ 113-6. Meetings of the Board and Commercial and Sports Fisheries Committee.—The said Board shall meet at least four times each year; one meeting to be held at some coastal area in the State, and the other three meetings to be held at a date and place to be fixed by the Board, and it may hold such other meetings as may be deemed necessary by the Board for the proper conduct of the business of the Department. The Commercial and Sports Fisheries Committee of the Board of Conservation and Development shall meet once each year prior to the meeting held in the coastal area. It will at that time hear recommendations of persons interested in the conservation of marine and estuarine resources. (1925, c. 122, s. 7; 1927, c. 57, s. 3; 1941, c. 45; 1945, c. 638, s. 2; 1947, c. 699; 1957, c. 248; 1965, c. 957, s. 10.)

Editor's Note.—

The 1965 amendment rewrote the last

two sentences. As to the effective date of the act, see Editor's note to § 113-127.

§ 113-8. Powers and duties of the Board.—The Board shall have control of the work of the Department, and may make such rules and regulations as it may deem advisable to govern the work of the Department and the duties of its employees.

It shall make investigations of the natural, industrial and commercial resources of the State, and take such measures as it may deem best suited to promote the conservation and development of such resources.

It shall have charge of the work of forest maintenance, forest fire prevention, reforestation, and the protection of lands and water supplies by the preservation of forests; it shall also have the care of State forests and parks, and other recre-

ational areas now owned or to be acquired by the State, including the lakes referred to in § 146-7.

It shall make such examination, survey and mapping of the geology, mineralogy and topography of the State, including their industrial and economic utilization, as it may consider necessary; make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State, and take such measures as it may consider necessary to promote their development.

It shall have the duty of enforcing all laws relating to the conservation of marine and estuarine resources.

It shall make investigations of the existing conditions of trade, commerce and industry in the State, with the causes which may hinder or encourage their growth, and may devise and recommend such plans as may be considered best suited to promote the development of these interests.

The Board may take such other measures as it may deem advisable to obtain and make public a more complete knowledge of the State and its resources, and it is authorized to cooperate with other departments and agencies of the State in obtaining and making public such information.

It shall be the duty of the Board to arrange and classify the facts derived from the investigations made, so as to provide a general source of information in regard to the State, its advantages and resources.

The Board may acquire such real and personal property as may be found desirable and necessary for the performance of the duties and functions of the Department of Conservation and Development, and pay for same out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired shall be in the name of the State of North Carolina for the use and benefit of the Department.

It shall also be the duty of the Board of Conservation and Development to supervise, guide, and control the performance by the Department of its additional duties as set forth in G.S. 113-3 (b) and to hold public hearings with regard thereto. (1925, c. 122, s. 9; 1927, c. 57; 1947, c. 118; 1957, c. 753, s. 4; c. 1424, s. 2; 1965, c. 957, s. 11.)

Cross Reference. — As to effect of change of names of Commissioner and Division of Commercial Fisheries of the Department to Commissioner and Division of Commercial and Sports Fisheries of the Department, see § 113-318.

Editor's Note.—

The 1965 amendment rewrote the fifth paragraph. As to the effective date of the act, see Editor's note to § 113-127.

§ 113-15.1. Director authorized to create Division of Community Planning; powers and duties.—(a) The Director of the Department of Conservation and Development, with the approval of the Board of Conservation and Development, is authorized to create within the Department of Conservation and Development a Division of Community Planning and to provide the necessary personnel and equipment for such division subject to the provisions of articles 1 and 2 of chapter 113 of the General Statutes.

(b) The following powers are hereby granted to the Director of the Department of Conservation and Development and may be delegated and assigned to the Administrator of Community Planning:

- (1) To provide planning assistance to municipalities and counties and joint and regional planning boards established by two or more governmental units in the solution of their local planning program. Planning assistance as used in this section shall consist of making population, economic land use, traffic, parking studies, developing plans based thereon to guide public and private development and other planning work of a similar nature. Planning assistance shall also include

the preparation of proposed subdivision regulations, zoning ordinances, and similar measures which may be recommended for the implementation of such plans. The Division may also undertake regional or State-wide studies which may be necessary as a basis for related studies conducted for municipalities and counties or for joint and regional planning boards. Provided, that the term planning assistance shall not be construed as including the providing of plans for specific public works.

- (2) To receive and expend federal and other funds for planning assistance to municipalities and counties, and to joint and regional planning boards, to receive and expend federal and other funds which may be made available for regional and State-wide studies, and to enter into contracts with the federal government, municipalities, counties, or joint and regional planning boards with reference thereto.
- (3) To provide appropriated State or other nonfederal funds, which together will constitute an amount at least equal to one half the estimated cost of the planning work for which a federal grant is requested.
- (4) To perform planning assistance, either through the staff of the Division of Community Planning, or through acceptable contractual arrangements with other qualified State agencies or institutions, or with private professional organizations or individuals.
- (5) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.
- (6) To co-operate with municipal, county, joint and regional planning boards, federal planning agencies, and planning agencies of other states for the purpose of aiding and encouraging an orderly co-ordinated development of the State.
- (7) To accept any funds which may be given or granted to the Department for planning assistance and to expend such funds in a manner and for such purposes as may be specified in the terms of the gift or grant. (1957, c. 996; 1961, c. 1214.)

Editor's Note.—The 1961 amendment re-wrote the introductory paragraph of subsection (b), and subdivisions (1), (2) and (6) thereof.

SUBCHAPTER II. STATE FORESTS AND PARKS.

ARTICLE 2.

Acquisition and Control of State Forests and Parks.

§ 113-34. Power to acquire lands as State forests, parks, etc.; donations or leases by United States; leases for recreational purposes; rules governing public use.—The Governor of the State is authorized upon recommendation of the Board of Conservation and Development to accept gifts of land to the State, the same to be held, protected, and administered by said Board as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. Such gifts must be absolute except in such cases as where the mineral interest on the land has previously been sold. The State Board of Conservation and Development shall have the power to purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, park, and protection purposes, using for such purposes any special appropriations or funds available. The State Board of Conservation and Development shall also have the power to acquire by condemnation under the provisions of chapter forty, such areas of land in different sections of the State as may in

the opinion of the Department of Conservation and Development be necessary for the purpose of establishing and/or developing State forests, State parks and other areas and developments essential to the effective operation of the State forestry and State park activities with which the Department of Conservation and Development has been or may be entrusted. Such condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina, and any property so acquired shall be administered, developed and used for experiment and demonstration in forest management, for public recreation and for such other purposes authorized or required by law: Provided, that before any action or proceeding under this section can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where such property may be situate, and until such approval is obtained, the rights and powers conferred by this section shall not be exercised. The Attorney General of the State is directed to see that all deeds to the State for land mentioned in this section are properly executed before the gift is accepted or payment of the purchase money is made.

The Board of Conservation and Development is further authorized and empowered to accept as gifts to the State of North Carolina such forest and submarginal farm land acquired by said federal government as may be suitable for the purpose of creating and maintaining State-controlled forests, game refuges, public shooting grounds, State parks, State lakes, and other recreational areas, or to enter into long-time leases with the federal government for such areas and administer them with such funds as may be secured from their administration in the best interest of long-time public use, supplemented by such necessary appropriations as may be made by the General Assembly. The Department of Conservation and Development is further empowered to segregate State hunting and fishing licenses, use permits, and concessions and other proper revenue secured through the administration of such forests, game refuges, public shooting grounds, State parks, State lakes, and other recreational areas to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas.

The Department of Conservation and Development, with the approval of the Governor and Council of State, is further authorized and empowered to enter into leases of lands and waters for State parks, State lakes and recreational purposes; and the State Department of Conservation and Development may construct, operate and maintain on said lands and waters suitable public service facilities and conveniences and may charge and collect reasonable fees for

- (1) The erection, maintenance and use of docks, piers and such other structures as may be permitted in or on said waters under its own regulations;
- (2) Fishing privileges in said waters, provided that such privileges shall be extended only to holders of bona fide North Carolina fishing licenses, and provided further that all State fishing laws and regulations are complied with.

The Department of Conservation and Development may make reasonable rules and regulations for the operation and use of boats or other craft on the surface of the said waters but shall not be authorized to charge or collect fees for such operation or use.

The Department may make reasonable rules for the regulation of the use by the public of said lands and waters and of public service facilities and conveniences constructed thereon, and said regulations shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars (\$50.00) or imprisonment of not more than thirty (30) days.

The authority herein granted is in addition to other authority now held and exercised by the Department of Conservation and Development. (1915, c. 253,

s. 1; C. S., s. 6124; 1925, c. 122, s. 22; 1935, c. 226; 1941, c. 118, s. 1; 1951, c. 443; 1953, c. 1109; 1957, c. 988, s. 2; 1965, c. 1008, s. 1.)

Editor's Note.—

The 1965 amendment, effective Jan. 1, 1966, deleted former subdivision (1) of the third paragraph, redesignated subdivisions

(2) and (3) of that paragraph as subdivisions (1) and (2), and added the last sentence therein.

§ 113-35. State timber may be sold by Department of Conservation and Development; forest nurseries; control over parks, etc.; operation of public service facilities; concessions to private concerns.—Timber and other products of such State forest lands may be sold, cut and removed under rules and regulations of the Department of Conservation and Development. Said Department shall have authority to establish on these or other State lands under its charge forest nurseries for the growing of trees for planting on such State forest lands and to procure or acquire tree seeds for nursery for forest use. Such planting stock as is not required in the State forests may be sold at not less than cost to landowners within the State for planting purposes, but all such planting shall be done under plans approved by the Department. The Department shall make reasonable rules for the regulation of the use by the public of such and all State forests, State parks, State lakes, game refuges and public shooting grounds under its charge, which regulations, after having been posted in conspicuous places on and adjacent to such State properties and at the courthouse of the county or counties in which such properties are situated, shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars or by imprisonment for not exceeding thirty days.

The Department may construct and operate within the State forests, State parks, State lakes and any other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of same; it may also charge and collect reasonable fees for:

- (1) The erection, maintenance and use of docks, piers and such other structures as may be permitted in or on State lakes under its own regulations;
- (2) Hunting privileges on State forests and fishing privileges in State forests, State parks and State lakes, provided that such privileges shall be extended only to holders of bona fide North Carolina hunting and fishing licenses, and provided further that all State game and fish laws and regulations are complied with.

The Department of Conservation and Development may make reasonable rules and regulations for the operation and use of boats or other craft on the surface of the said waters but shall not be authorized to charge or collect fees for such operation or use.

The Department may also grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Board of Conservation and Development shall deem to be in the public interest. The Department may make reasonable rules for the regulations of the use by the public of the public service facilities and conveniences herein authorized which regulations shall have the force and effect of law, and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars (\$50.00) or by imprisonment for not exceeding thirty days. (1931, c. 111; 1947, c. 697; 1965, c. 1008, s. 2.)

Editor's Note.—

The 1965 amendment, effective Jan. 1, 1966, deleted former subdivision (1) of the second paragraph, redesignated subdivi-

sions (2) and (3) of that paragraph as subdivisions (1) and (2) and added the last sentence therein.

ARTICLE 4.

Protection and Development of Forests; Fire Control.

§ 113-54. **Duties of forest rangers; payment of expenses by State and counties.**—Forest rangers shall have charge of measures for controlling forest fires, protection of forests from pests and diseases, and the development and improvement of the forests for maximum production of forest products; shall make arrests for violation of forest laws; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the State Forester; shall patrol and man lookout towers and other points during dry and dangerous seasons under the direction of the State Forester, and shall perform such other acts and duties as shall be considered necessary by the State Forester for the purposes set out in Articles 4, 4A, and 6A of this chapter in the protection, development and improvement of the forested area of each of the counties within the State. No county may be held liable for any part of the expenses thus incurred unless specifically authorized by the board of county commissioners under prior written agreement with the State Forester; appropriations for meeting the county's share of such expenses so authorized by the board of county commissioners shall be provided annually in the county budget. For each county in which financial participation by the county is authorized, the State Forester shall keep or cause to be kept an itemized account of all expenses thus incurred and shall send such accounts periodically to the board of county commissioners of said county; upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to be issued a warrant on the county treasury for the payment of the county's share of such expenditures, said payment to be made within one (1) month after receipt of such statement from the State Forester. Appropriations made by a county for the purposes set out in Articles 4, 4A and 6A of this chapter in the cooperative forest protection, development and improvement work are not to replace State and federal funds which may be available to the State Forester for the work in said county, but are to serve as a supplement thereto. The funds appropriated to the Department of Conservation and Development in the biennial Budget Appropriation Act for the purposes set out in Articles 4, 4A, and 6A of this chapter shall not be expended in a county unless that county shall contribute at least twenty-five per cent (25%) of the total cost of the forestry program. (1915, c. 243, s. 4; C. S., s. 6136; 1925, c. 106, s. 1; 1927, c. 150, s. 3; 1935, c. 178, s. 2; 1943, c. 660; 1947, c. 56, s. 1; 1951, c. 575; 1961, c. 833, s. 17; 1963, c. 312, s. 1.)

Editor's Note.—

The 1963 amendment rewrote this section.

The 1961 amendment, effective July 1, 1961, added the last sentence.

§ 113-55. **Powers of forest rangers to prevent and extinguish fires.**—Forest rangers shall prevent and extinguish forest fires and enforce all statutes of this State now in force or that hereafter may be enacted for the protection of forests and woodlands from fire, and they shall have control and direction of all persons and apparatus while engaged in extinguishing forest fires. Any forest ranger may arrest, without a warrant, any person or persons committing a crime in his presence, and bring such person or persons forthwith before a justice of the peace or other officer having jurisdiction, who shall proceed without delay to hear, try, and determine the matter. During a season of drought the State Forester may establish a fire patrol in any district, and in case of fire in or threatening any forest or woodland the forest ranger shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest ranger or his deputies may summon any male resident between the ages of eighteen and forty-five years to assist in extinguishing fires, and may

require the use of horses and other property needed for such purpose; any person so summoned, and who is physically able, who refuses or neglects to assist or to allow the use of horses, wagons, or other material required, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than five dollars nor more than fifty dollars. No action for trespass shall lie against any forest ranger or person summoned by him for crossing or working upon lands of another in connection with his duties as forest ranger. (1915, c. 243, s. 6; C. S., s. 6137; 1925, c. 106, ss. 1, 2; c. 240; 1927, c. 150, s. 4; 1951, c. 575; 1963, c. 312, s. 2.)

Editor's Note.—

The 1963 amendment substituted, in the second sentence, the words "committing a crime in his presence" for the words "taken

by him in the act of violating any of the laws for the protection of forests and woodlands."

§ 113-56. Compensation of forest rangers.—Forest rangers shall receive compensation from the Board of Conservation and Development at a reasonable rate to be fixed by said Board for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation, or food supplies incurred in the performance of their duties, according to an itemized statement to be rendered the State Forester every month, and approved by him. Forest rangers shall render to the State Forester a statement of the services rendered by the men employed by them or their deputy rangers, as provided in this article, within one month of the date of service, which bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the State Forester. If said bill be duly approved by the State Forester, it shall be paid by direction of the Board of Conservation and Development out of any funds provided for that purpose. (1915, c. 243, s. 7; C. S., s. 6138; 1924, c. 60; 1925, c. 106, ss. 1, 3; c. 122, s. 22; 1947, c. 56, s. 2; 1951, c. 575; 1963, c. 312, s. 3.)

Editor's Note.—

The 1963 amendment substituted, in the first sentence, "in the performance of their

duties" for the words "in fighting or extinguishing any fire."

§ 113-58. Misdemeanor to destroy posted forestry notice.—Any person who shall maliciously or wilfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the State Forester, under the provisions of this article, or any other act which may be passed for the purpose of protecting and developing the forests in this State, shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00), or imprisoned not exceeding thirty (30) days. (1915, c. 243, s. 5; C. S., s. 6140; 1963, c. 312, s. 4.)

Editor's Note.—The 1963 amendment in this State from fire" to read "protecting and developing the forests in this State." changed the words "protecting the forest

§ 113-59. Co-operation between counties and State in forest protection and development.—The board of county commissioners of any county is hereby authorized and empowered to co-operate with the Department of Conservation and Development in the protection, reforestation, and promotion of forest management of their own forests within their respective counties, and to appropriate and pay out of the funds under their control such amount as is provided in § 113-54. (1921, c. 26; C. S., s. 6140(a); 1925, c. 122, s. 22; 1945, c. 635; 1963, c. 312, s. 5.)

Editor's Note.—

The 1963 amendment substituted "is" for "are" near the beginning of this section. It also deleted the words "from fire of the" formerly appearing near the mid-

dle of the section and inserted in lieu thereof the words "reforestation, and promotion of forest management of their own."

§ 113-60. Instructions on forest preservation and development. — It shall be the duty of all district, county, township rangers, and all deputy rangers provided for in this chapter to distribute in all of the public schools and high schools of the county in which they are serving as such fire rangers all such tracts, books, periodicals and other literature that may, from time to time, be sent out to such rangers by the State and federal forestry agencies touching or dealing with forest preservation, development, and forest management.

It shall be the duty of the various rangers herein mentioned under the direction of the State Forester, and the duty of the teachers of the various schools, both public and high schools, to keep posted at some conspicuous place in the various classrooms of the school buildings such appropriate bulletins and posters as may be sent out from the forestry agencies herein named for that purpose and keep the same constantly before their pupils; and said teachers and rangers shall prepare lectures or talks to be made to the pupils of the various schools on the subject of forest fires, their origin and their destructive effect on the plant life and tree life of the forests of the State, the development and scientific management of the forests of the State, and shall be prepared to give practical instruction to their pupils from time to time and as often as they shall find it possible so to do. (1925, c. 61, s. 3; 1951, c. 575; 1963, c. 312, s. 6.)

Editor's Note.—

The 1963 amendment substituted "rangers" for "wardens" near the beginning of the first paragraph, deleted the words "fires and forest" formerly appearing before "preservation" and added "develop-

ment, and forest management." The 1963 amendment also inserted near the end of the second paragraph the words "the development and scientific management of the forests of the State."

SUBCHAPTER IIA. DISTRIBUTION AND SALE OF HUNTING, FISHING AND TRAPPING LICENSES.

ARTICLE 6B.

License Agents.

§ 113-81.4. Purpose of article.—The purpose of this article is to relieve wildlife protectors of responsibility for the distribution of hunting, fishing, and trapping licenses, to establish procedures whereby such licenses shall be issued directly to hunting and fishing license agents, and to provide for strict accountability for all licenses so issued and the proceeds from the sale thereof. (1961, c. 352, s. 1.)

Cross references. — As to fishing licenses, see § 113-143 et seq. As to hunting licenses, see § 113-95. As to trapping licenses, see § 113-96.

Editor's Note. — The act inserting this article is effective as of July 1, 1962.

§ 113-81.5. Definitions.—When used in this article:

- (1) The word "Commission" or the phrase "Wildlife Resources Commission" means the North Carolina Wildlife Resources Commission.
- (2) The words "Executive Director" mean the Executive Director of the North Carolina Wildlife Resources Commission.
- (3) The words "license agent" or "hunting and fishing license agent", or "State hunting and fishing license agent" mean any person, firm or corporation who or which is authorized by the Wildlife Resources Commission to sell hunting and fishing licenses as herein defined.
- (4) The word "licenses" and the phrase "hunting and fishing licenses" shall be construed to include:
 - a. State resident hunting licenses;
 - b. County resident hunting licenses;
 - c. Nonresident hunting licenses;

- d. Combination hunting and fishing licenses;
- e. State resident fishing licenses;
- f. County resident fishing licenses;
- g. Resident daily fishing permits;
- h. Nonresident season fishing licenses;
- i. Nonresident five-day fishing licenses;
- j. Nonresident daily fishing licenses;
- k. Resident special trout fishing licenses;
- l. Nonresident special trout fishing licenses;
- m. State resident trapping licenses;
- n. County resident trapping licenses;
- o. Nonresident trapping licenses; and
- p. Special device fishing licenses and special permits for hunting and fishing on wildlife management areas where the same may, in the discretion of the Executive Director, be consigned to State hunting and fishing license agents. (1961, c. 352, s. 2.)

§ 113-81.6. Duty of Wildlife Resources Commission.—The Wildlife Resources Commission is hereby authorized and directed to relieve all wildlife protectors of responsibility for the distribution of licenses to license agents and of accountability for the proceeds of the sale thereof as soon as may be practicable after July 1, 1962; provided, however, the Commission may require the services of any wildlife protector for the purpose of implementing the provisions of this article, for purposes of investigation and inspection of any hunting and fishing license agent or any applicant for the position of hunting and fishing license agent, and for the purpose of delivering licenses to any agent in any case of emergency. (1961, c. 352, s. 3.)

§ 113-81.7. Authority of the Commission.—The Wildlife Resources Commission is hereby authorized and empowered:

- (1) To appoint qualified persons, firms, or corporations to the position of State hunting and fishing license agent.
- (2) To promulgate, publish, disseminate, and enforce regulations, not inconsistent with this article, to govern the distribution and sale of hunting and fishing licenses and to require strict accounting for unsold licenses and the proceeds of sold licenses.
- (3) To fix minimum standards, in addition to the requirements of this article, regulating the qualifications of State hunting and fishing license agents, the location and type of places of business at which licenses may be sold, and the facilities provided for the safekeeping of licenses and the proceeds thereof.
- (4) To prescribe procedures whereby any hunting and fishing license agent may be relieved of accountability for unsold licenses or the proceeds of sold licenses which may be lost or destroyed due to causes beyond the control of such agent. (1961, c. 352, s. 4.)

§ 113-81.8. Duties of Executive Director of Wildlife Resources Commission.—The Executive Director of the Wildlife Resources Commission shall:

- (1) Assist the Commission with such investigation of applicants for the position of hunting and fishing license agent as may be necessary to determine whether they meet the requirements of this article and such additional standards as may be fixed by the Commission.
- (2) Require periodic inspections of the books and records of all State hunting and fishing license agents for the purpose of ascertaining that the provisions of this article and the regulations promulgated hereunder are being complied with.

- (3) Dismiss any hunting and fishing license agent who fails to comply with the terms and spirit of this article or the regulations promulgated hereunder.
- (4) Prepare and distribute all forms of hunting and fishing licenses and all forms necessary for accurate reporting of license sales and accounting for unsold licenses and the proceeds of sold licenses.
- (5) Relieve any hunting and fishing license agent, subject to the regulations of the Commission, of accountability for unsold licenses or the proceeds of sold licenses when it has been made to appear to his satisfaction that such licenses or the proceeds from the sale thereof have become lost or destroyed by reason of a cause or causes beyond the control of such agent. (1961, c. 352, s. 5.)

§ 113-81.9. **Qualifications of license agents.** — In addition to such minimum standards as may be fixed by the Commission, applicants for appointment as State hunting and fishing license agent shall be required to produce satisfactory evidence of their financial responsibility. No person, firm or corporation shall be appointed as a hunting and fishing license agent unless the character, reputation, and capabilities of the applicant, by whatever means ascertainable, are such as to convince the Commission that such applicant may safely be permitted to handle public funds. (1961, c. 352, s. 6.)

§ 113-81.10. **Bond required of agents.**—Every State hunting and fishing license agent shall, before receiving licenses, give a bond in the amount of two thousand dollars (\$2,000.00) payable to the State of North Carolina and conditioned upon a true and prompt accounting for all public moneys received from the sale of hunting and fishing licenses, for all licenses received but remaining unsold, and for the face value of all licenses received but remaining unaccounted for. Such bond may be a blanket bond with corporate surety selected by the Executive Director. Any public official who is required to post an official bond, which in the judgment of the Executive Director is sufficient to protect the State against losses of licenses and license proceeds, may be authorized to sell hunting and fishing licenses without giving the bond required by this section. (1961, c. 352, s. 7.)

§ 113-81.11. **Duties of license agents.**—Each State hunting and fishing license agent shall:

- (1) Keep accurate records in such manner and form as may be prescribed by the Commission of all licenses received, sold, and remaining unsold, and of all public moneys received from the sale of licenses.
- (2) Keep all public funds received from the sale of licenses separate and apart from personal or other business funds.
- (3) Permit inspection and audit of all hunting and fishing license records by any authorized officer or employee of the Commission at any time during business hours.
- (4) Render a report to the Commission on or before the tenth day of each month during the accounting periods for the types of licenses being sold to include all licenses sold during the preceding calendar month, such report to be accompanied by the stubs and/or carbon copies of all sold licenses and a check or money order for the public funds received from said sales.
- (5) Render a final report on or before the fifteenth day of January of each year showing all fishing licenses sold but previously unreported, together with the stubs and/or carbon copies of such licenses and a check or money order for the public funds received from said sales, and, in addition, all fishing licenses received but then remaining unsold.

- (6) Render a final report on or before the first day of March of each year showing all hunting, trapping, and combination hunting and fishing licenses sold but previously unreported, together with a check or money order for all public funds received from said sales and the stubs and/or carbon copies of all sold licenses, and, in addition, all such licenses received but then remaining unsold; provided, however, those hunting and fishing license agents who are operators of licensed "controlled shooting preserves" shall have until not later than the fifteenth day of April of each year to make the final report required by this subdivision. (1961, c. 352, s. 8.)

§ 113-81.12. **Penalties; dismissal of agents.**—(a) The failure of any State hunting and fishing license agent to perform any of the duties set forth in the preceding section, or failure to comply with any regulation adopted pursuant to this article, shall be cause for immediate dismissal of such agent.

(b) The willful violation of any provision of this article, or of any regulation promulgated pursuant thereto, shall constitute a misdemeanor.

(c) The willful failure or refusal of any hunting and fishing license agent to pay over to the proper authority all public funds received by him from the sale of licenses within the times fixed by this article shall constitute a misdemeanor, and each day's continuance of such willful failure or refusal shall constitute a separate offense.

(d) The dismissal of any hunting and fishing license agent, or the conviction or acquittal of any license agent of a criminal offense under this article shall not operate to extinguish any liability under his bond for failure to account for public funds received from the sale of licenses or for the face value of unsold licenses which remain unaccounted for.

(e) When a check or draft of any license agent remitting public funds for sold licenses shall be returned by the banking facility upon which the same is drawn for lack of funds, such license agent shall be liable for a penalty of five per cent (5%) of the amount of such check or draft to the Wildlife Resources Commission, but in no event shall such penalty be less than one dollar (\$1.00) or more than two hundred dollars (\$200.00). (1961, c. 352, s. 9.)

§ 113-81.13. **Repealer.**—This article shall be construed as an amendment to the existing law to the extent that it may conflict therewith, but this article shall not be construed to modify any existing statutory license requirement for engaging in hunting, fishing, trapping, or any other activity for which a license or permit is now required; or to change any of the existing license fees, or fees now allowed by statute to the agents issuing licenses; nor shall it modify the existing statutory requirements and restrictions as to the purposes for which the various license fees may be expended. (1961, c. 352, s. 11.)

SUBCHAPTER III. GAME LAWS.

ARTICLE 7.

North Carolina Game Law of 1935.

§ 113-84. **Powers and duties of the Board of Conservation and Development.**

- (1) Fix seasons and bag limits or close seasons on any species of game, bullfrogs, bird, or fur-bearing animal, in any specified locality or localities, or the entire State, when it shall find, after said investigation, that such action is necessary to assure the maintenance of an adequate supply thereof. The statutes now governing such subjects shall continue in full force and effect, except as altered or modified by rules and regulations promulgated by the Board.

- (2) Fix seasons and bag limits or close season on any species, age, size or sex of deer in any specified locality or localities, or the entire State, when it shall find, after said investigation and after a public hearing held by the Commission in the area to be affected when determining the advisability of an open season on doe deer, that such action is necessary to assure the maintenance of an adequate and balanced supply thereof. Provided, however, that in any locality where the use of rifles is permitted for the taking of deer, the Wildlife Resources Commission shall be authorized to fix an open season on doe deer on any day or at any time concurrent with the open season on male deer. This provision shall apply only to the counties of Burke, Caldwell, Rutherford, Surry, Wilkes and counties lying west of the same. Where the number of eligible hunters exceeds the number of doe deer to be harvested as determined by the Wildlife Resources Commission, the Commission shall establish some system of issuing permits in order to regulate the harvest of doe deer.

(1961, cc. 311, 1056.)

Editor's Note.—

The first 1961 amendment deleted the word "not" formerly appearing between "shall" and "be" in line nine of subdivision (2).

The second 1961 amendment inserted "bullfrogs" in subdivision (1) but excluded eighty-nine counties from the amendatory act, naming all counties except Bertie, Brunswick, Carteret, Chatham, Duplin, Franklin, Harnett, Haywood, Polk, Richmond and Transylvania.

The third 1961 amendment deleted "Martin" from the counties excluded by the second 1961 amendment. Thus "Martin" by reason of the third amendment comes within the operation of subdivision (1) of the section as amended by the second 1961 amendment.

As only subdivisions (1) and (2) were affected by the amendments the rest of the section is not set out.

§ 113-91. Powers of Commissioner.

Local Modification.—Washington: 1965, c. 140.

§ 113-95. Licenses required.—No person shall at any time take any wild animals or birds without first having procured a license as provided by this article, which license shall authorize him to take game only during the periods of the year when it shall be lawful. The applicant for a license shall fill out a blank application in the form prescribed and furnished by the Commissioner. Said application shall be subscribed and sworn to by the applicant before an officer authorized to administer oaths in this State, and the persons hereby authorized to issue licenses are hereby authorized to administer oaths to applicants for such licenses. Licenses may be issued by the clerk of the superior court for each county, the Commissioner, game protectors and such other persons as the Commissioner may authorize in writing:

License Fees

Nonresident hunting license	\$20.00
Nonresident six-day hunting permit	15.75
State resident hunting license	4.25
Combination hunting and fishing license	6.25
County hunting license	1.65

Any applicant who is a resident of this State shall pay to the authorized license issuing agent the license fee for the type of license applied for in accordance with the above schedule. The issuing agent is authorized to retain, for each license sold, the sum of fifty cents (50¢) as his fee for issuing nonresident hunting licenses, twenty-five cents (25¢) for State resident hunting licenses and combination hunting and fishing licenses, and fifteen cents (15¢) for county hunting li-

censes; provided, however, that employees of the Wildlife Resources Commission shall not collect issuance fees and shall sell all licenses for fifty cents (50¢), twenty-five cents (25¢), or fifteen cents (15¢) less than the stated amounts as appropriate. The county hunting license shall entitle a resident of the State to take game birds and animals in the county of his residence; the State resident hunting license shall entitle a resident to take game birds and animals in any county in the State at large, in accordance with the North Carolina game laws and appropriate regulations of the Wildlife Resources Commission. All persons who have lived in this State for at least six months immediately preceding the making of such application shall be deemed resident citizens for the purposes of this article. Said applicant, if a nonresident of this State or a resident for less than six months, or an alien, shall pay to the agent issuing the license nineteen dollars and fifty cents (\$19.50) as a license fee and the sum of fifty cents (50¢) as a fee to the agent issuing the same and shall obtain a nonresident hunting license, which shall entitle him to take game birds and animals as authorized by this article during an entire season; provided that a nonresident may hunt for six consecutive days during a season upon the purchase of a permit provided by the Wildlife Resources Commission for fifteen dollars and fifty cents (\$15.50) as a permit fee and twenty-five cents (25¢) as a fee to the agent issuing the same. The Commissioner is hereby authorized and empowered to issue combination licenses for hunting and fishing which said combination license may be for an amount less than the total of the hunting and fishing license when purchased separately. For a State resident hunting and fishing license the applicant shall pay to the officer or person issuing the license the sum of six dollars (\$6.00) as a license fee and twenty-five cents (25¢) as a fee for issuing same, which shall entitle him to hunt and fish in any county of the State at large according to the law: Provided, that twenty-five cents (25¢) of the fee received for the sale of each resident State hunting license, each nonresident hunting license, and each State resident hunting and fishing license as set forth above shall be set aside as a special fund which shall be expended by the North Carolina Wildlife Resources Commission, in its discretion, for the purpose of purchase, lease, development and management of lands and waters in North Carolina, or for the purpose of securing federal funds for wildlife conservation projects through means of matching federal funds in such proportion as federal laws may require, and that twenty-five cents (25¢) of each State fee herein described shall be expended by such Commission, in its discretion, for the purpose of enlarging, expanding and making more effective the work of the education and enforcement divisions of the North Carolina Wildlife Resources Commission. Any lands and waters acquired as above provided are to be used for the propagation of game birds, game animals and fish for public hunting and fishing.

Any person acting for hire as a hunting guide shall obtain a guide's license, and shall pay therefor a license fee in an amount not to exceed the sum of ten dollars (\$10.00), the Board being hereby authorized and empowered to provide classifications, and to fix fees within said limit as to class. The Commissioner is hereby authorized and empowered to prescribe rules and make regulations respecting the duties of guides, to require that guides take an oath to abide by the game laws of the State, and to rescind the license of any guide who violates the regulations or is convicted of violating the game laws of the State: Provided, that the Commissioner may, upon request, issue a nonresident license to any game agent of the United States or of a state of the United States without payment of any fee, which license may be used by such agent of the United States or of a state of the United States only in the discharge of his official business: Provided, that a nonresident who holds fee simple title to lands in North Carolina may hunt on such lands by payment of a license fee of five dollars (\$5.00) plus twenty-five cents (25¢) for the issuing officer. Such nonresident must make a sworn application to the Commissioner, on forms provided by said Commis-

sioner, setting forth the location of such lands, the nonresident's title thereto, and such other information as may be required by the Commissioner, and if such nonresident be a corporation, then only the nonresident president, the vice-president, the secretary-treasurer, and the directors, not to exceed seven in number, of such corporation, shall be permitted to take out a nonresident landowner's hunting license, as herein provided.

Any nonresident owning in his own right and in severalty one hundred acres or more of land in the State of North Carolina may hunt upon such lands, subject to the provisions and restrictions of the North Carolina Game Law, without being required to purchase a hunting license.

Notwithstanding any other provisions of this section, an applicant shall be permitted to hunt on a "controlled shooting preserve", as defined in subdivision (7) of G. S. 113-84, if he possesses a special controlled shooting preserve hunting license. Said applicant shall pay to the officer or person issuing the license the sum of five dollars (\$5.00) as a license fee, and the sum of twenty-five cents (25¢) as a fee to the officer or person, other than the Commissioner, for issuing the same, and shall thereby obtain a controlled shooting preserve license entitling such person to hunt, during the year for which such license is issued, on any controlled shooting preserve in the State without the necessity of having any other hunting license. (1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1; 1957, c. 849, s. 1; 1959, c. 304; 1961, c. 834, s. 1.)

Cross Reference.—As to agents for sale and distribution of hunting, fishing and trapping licenses, see § 113-81.4.

Editor's Note.—

The 1961 amendment rewrote the schedule of license fees and the first part of

the second paragraph. It also increased the State resident hunting and fishing license fee from five to six dollars. Section 7 of the amendatory act provides that the fee increases made in this section shall be charged on and after August 1, 1961.

§ 113-96. Trappers' licenses.

Cross Reference.—As to agents for sale and distribution of hunting, fishing and trapping licenses, see § 113-81.4.

§ 113-102. Protected and unprotected game.

(d) No person shall take squirrels at any time in any public park. It shall be unlawful at any time to buy, or sell, rabbits or squirrels for the purpose of resale. Rabbits may be box-trapped or hunted without gun at any time. The setting of steel traps for bear is unlawful. Foxes may be taken with dogs only, except during the open season, when they may be taken in any manner. It shall be unlawful at any time to take any wild deer while swimming or in water to its knees. It shall be unlawful to take alligators or their eggs at any time. (1935, c. 486, s. 18; 1949, c. 1205, s. 2; 1965, c. 904, s. 1.)

Editor's Note.—

The 1965 amendment added the last sentence in subsection (d).

As the rest of the section was not af-

ected by the amendment, it is not set out.

Section 1½, c. 904, Session Laws 1965 provides: "This shall not apply to the landowner or owners."

§ 113-104. Manner of taking game.—No person shall at any time of the year take in any manner, number, or quantity any wild bird or wild animal, or take the nests or eggs of any wild bird, or possess, buy, sell, offer or expose for sale, or transport at any time or in any manner any such bird, animal, or part thereof, or any birds' nests or eggs, except as permitted by this article: the possession of any game animals, or game birds or part of such animals or game birds, except those expressly permitted by the Board, in any hotel, restaurant, cafe, market or store, or by any produce dealer in this State shall be prima facie evidence of the possession thereof for the purpose of sale in violation of the provisions of this article; but this provision shall not be construed to prohibit the person lawfully obtaining game from having it prepared in a public eating place and

served to himself and guest: Provided, however, that for the purpose of this article any person hiring another to kill aforesaid game animals or game birds and receiving same shall be deemed buying same, and subject to the penalties of this article. Game birds and game animals shall be taken only in the daytime, between sunrise and sunset, with a shotgun not larger than number ten (10) gauge, a rifle, or with bow having minimum pull of forty-five (45) pounds and nonpoisonous, nonbarbed, nonexplosive arrow with minimum broadhead width of seven-eighths of an inch, unless otherwise specifically permitted by this article: Provided, however, blunt type arrowheads may be used in taking game birds and small game animals including, but not by way of limitation, rabbits, squirrels, quail, grouse, turkeys and pheasants. No person shall take any game animals or game birds or migratory game birds from any automobile, or from any engine powered or self-propelled vehicle or any vehicle especially equipped to provide facilities for taking deer by any unlawful means, or by aid of or with the use of any jacklight, or other artificial light, net, trap, snare, fire, salt lick or poison; nor shall any such jacklight, net, trap, snare, fire, salt lick or poison be used or set to take any animals or birds; nor shall birds or animals be taken at any time from an airplane, power boat, sailboat, or any boat under sail, or any floating device towed by a power boat or sailboat or, during the hours between sunset and sunrise, from any other floating device; nor shall any person take any dove, wild turkey, or upland game bird on any field, or in any cover in which corn, wheat, or other grain has been deposited for the purpose of drawing such birds thereto. However, it shall be lawful to use an artificial light when hunting raccoons or opossum with dogs, or when hunting frogs. A person may take game birds and wild animals during the open season therefor with the aid of dogs, unless specifically prohibited by this article. It shall be lawful for individuals and organized field trial clubs or associations for the protection of game, to run trials or train dogs at any time: Provided, that no shotgun be used and that no game birds or game animals shall be taken during the closed season by reason thereof. The Board shall have, and is hereby given, full power and authority to make regulations defining the manner of taking fur-bearing animals and to prohibit the use of steel traps in any county or districts of the State when it shall appear necessary and advisable to the said Board. Any person who shall cut down den trees in taking game or fur-bearing animals shall be guilty of a misdemeanor.

It shall be unlawful for any person or persons to hunt with guns or dogs upon the lands of another without first having obtained permission from the owner or owners of such lands, and said permission so obtained may be continuous for one open hunting season only.

It shall be unlawful for any person to hunt, take or kill any upland game birds, squirrels or rabbits with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than three shells, the magazine of which has not been cut off or plugged with a one-piece metal or wooden filler incapable of removal through the loading end thereof, so as to reduce the capacity of said gun to not more than three shells at one time in the magazine and chamber combined. It shall be unlawful for any person while hunting wild birds and animals with a gun to refuse to surrender such gun for inspection upon request of a duly authorized officer. It shall also be unlawful to shoot any such birds while such birds are sitting on the ground.

It shall be unlawful for any person to possess, sell, or offer for sale any noose-type commercially-manufactured snare by which an animal may be entangled and caught.

It shall be unlawful for any person to take or kill or attempt to take or kill any deer from or through the use of any boat or other floating device; provided that this section shall not prohibit the transportation of hunters or their legally taken game by means of any boat or other floating device, and shall not prohibit the hunter shooting from his stand, if such stand is not within or a part of such boat

or floating device. This paragraph shall not apply to the counties of Beaufort, Bertie, Burke, Camden, Carteret, Cherokee, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Gates, Hertford, Hoke, Lenoir, Martin, Northampton, Pamlico, Pasquotank, Perquimans, Person, Robeson, Sampson, Surry, Swain, Tyrrell, Washington, Wayne and Yadkin. (C. S., s. 2124; 1935, c. 486, s. 20; 1939, c. 235, s. 1; 1949, c. 1205, s. 3; 1955, c. 104; 1959, cc. 207, 500; 1961, c. 1182; 1963, c. 381; c. 697, ss. 1, 3½.)

Editor's Note.—

The 1961 amendment inserted in the first paragraph the provision that blunt type arrowheads may be used in taking game birds and small game animals, etc.

The first 1963 amendment inserted the words "or from any engine powered or

self-propelled vehicle or any vehicle especially equipped to provide facilities for taking deer by any unlawful means" near the beginning of the third sentence. The second 1963 amendment added the last paragraph.

§ 113-109. Punishment for violation of article.

(d) Any person who shall take or attempt to take wild turkey during the closed season thereon as established by the Wildlife Resources Commission, or any person who shall take or attempt to take wild turkey during the open season as established by the Wildlife Resources Commission by the use of any unlawful means or method as defined in G.S. 113-104, shall, upon conviction, be fined not less than one hundred dollars (\$100.00) or imprisoned for not less than ninety (90) days, or both in the discretion of the court.

(e) Any person who shall take or kill or attempt to take or kill any deer from any boat or other floating device in violation of the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), or imprisoned for not less than thirty (30) days nor more than sixty (60) days, in the discretion of the court. This subsection shall not apply to the counties of Beaufort, Bertie, Burke, Camden, Carteret, Cherokee, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Gates, Hertford, Hoke, Lenoir, Martin, Northampton, Pamlico, Pasquotank, Perquimans, Person, Robeson, Sampson, Surry, Swain, Tyrrell, Washington, Wayne and Yadkin.

(f) The provisions of this section relating to penalties shall not apply in the case of deer killed while destroying crops on the land owned or leased by the person killing such deer. (1935, c. 486, s. 25; 1939, c. 235, s. 2; c. 269; 1941, c. 231, s. 2; c. 288; 1945, c. 635; 1949, c. 1205, s. 4; 1953, c. 1141; 1963, c. 147; c. 697, ss. 2, 3½; 1965, c. 616.)

Editor's Note.—

The first 1963 amendment inserted present subsection (d) and the second 1963 amendment inserted present subsection (e). Former subsection (e) has been redesignated (f).

The 1965 amendment added in subsec-

tion (d) the provision as to taking wild turkey during open season by use of any unlawful means.

As only subsections (d), (e) and (f) were affected by the amendments, the rest of the section is not set out.

ARTICLE 8.

Fox Hunting Regulations.

§ 113-111. No closed season in certain counties.—It shall be lawful to hunt, take or kill foxes at any time by any lawful method in Alexander, Alleghany, Anson, Ashe, Avery, Cabarrus, Catawba, Davidson, Davie, Forsyth, Franklin, Greene, Harnett, Haywood, Henderson, Iredell, Lenoir, Martin, Nash, Perquimans, Pitt, Rockingham, Rowan, Stokes, Tyrrell, Union, Watauga, and Yadkin counties, and in Bensalem, Sheffields, Ritters, Deep River, and Carthage townships in Moore County. (1931, c. 143, s. 5; 1933, c. 428; 1939, c. 319; 1943, c. 615; 1947, cc. 333, 802; 1949, c. 263; 1953, cc. 196, 197, 199, 200, 960.

989; 1955, cc. 184, 286, 508, 685, 1037, 1039, 1119, 1123; 1957, c. 7-42, s. 1; 1959, cc. 535, 536, 570; 1963, c. 830; 1965, c. 522.)

Local Modification.—Perquimans: 1965, c. 773, repealing 1963, c. 827.

Editor's Note.—

The 1963 amendment deleted "Beaufort" from this section.

The 1965 amendment deleted Yancey from the list of counties. The amendatory act makes it unlawful to kill fox in Yancey County in any manner and makes violation of the act a misdemeanor.

ARTICLE 10.

Regulation of Fur Dealers; Licenses.

§ 113-117. Permits may be issued to nonresident dealers.

Cited in *Simkins v. Moses H. Cone Memorial Hospital*, 211 F. Supp. 628 (1962).

ARTICLE 10A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

§ 113-120.1. **Trespass for purposes of hunting, etc., without written consent a misdemeanor.**—Any person who wilfully goes on the land, waters, ponds, or a legally established water fowl blind of another upon which notices, signs or posters, described in § 113-120.2, prohibiting hunting, fishing, or trapping, or upon which "posted" notices have been placed, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a misdemeanor and punished by a fine of not less than fifteen dollars (\$15.00) nor more than fifty dollars (\$50.00) or by confinement in jail for not more than thirty days, in the discretion of the court, provided, that if a violation of this section be committed at nighttime between the hours of sunset and sunrise, the person so offending shall be punished by a fine of not less than thirty dollars (\$30.00) nor more than fifty dollars (\$50.00) or by confinement in jail for not more than thirty days, in the discretion of the court. Provided, further, that no arrests under authority of this section shall be made without the consent of the owner or owners of said land, or their duly authorized agents in the following counties: Halifax, Onslow, Warren. (1949, c. 887, s. 1; 1953, c. 1226; 1965, c. 1134.)

Editor's Note.—

The 1965 amendment rewrote this section.

§ 113-120.2. **Regulations as to posting of property.** — The notices, signs, or posters described in G.S. 113-120.1 shall measure not less than 10 inches by 12 inches and shall be conspicuously posted on private lands not more than 500 yards apart close to and along the boundaries. At least one such notice, sign, or poster shall be posted on each side of such land, and one at each corner thereof, provided that said corner can be reasonably ascertained. For the purpose of prohibiting fishing, or the taking of fish by any means, in any stream, lake, or pond, it shall only be necessary that the signs, notices, or posters be posted along the stream or shore line of a pond or lake at intervals of not more than 300 yards apart. (1949, c. 887, s. 2; 1953, c. 1226; 1965, c. 923.)

Editor's Note.—

The 1965 amendment deleted "not less than 150 yards and" following "private

lands" in the first sentence, and added the last sentence.

ARTICLE 10B.

Liability of Landowners to Authorized Users.

§ 113-120.5. **Liability of persons allowing others to use premises for certain purposes limited.**—Except as provided in § 113-120.6, an owner,

lessee, occupant or person in control of premises who gives permission to another to hunt, fish, trap, camp, hike, or for other recreational use upon such premises does not thereby extend any assurance that the premises are safe for such purpose, or that a duty of care is owed or that he assumes responsibility for or incurs liability for any injury to person or property caused by an act of persons to whom the permission is granted, nor to any person or persons who enter without permission: Provided, that nothing contained in this section or article shall be construed as limiting or nullifying the doctrine of attractive nuisance as the same prevails in this jurisdiction. (1963, c. 298.)

§ 113-120.6. What liability not affected.—This article does not affect the liability which would otherwise exist for failure to guard, or to warn, against a dangerous condition, use, structure or activity; or for injury suffered in any case where permission to hunt, fish, trap, camp, hike, or for other recreational use was granted for a consideration other than the consideration, if any, paid to said landowner by the State or paid by other governmental unit; or for injury caused by acts of persons to whom permission to hunt, fish, trap, camp, hike, or for other recreational use was granted, or to other persons as to whom the person granting permission, or the owner, lessee, occupant, or person in control of the premises, owed a duty to keep the premises safe or to warn of danger. (1963, c. 298.)

§ 113-120.7. Meaning of "premises."—As used in this section the word "premises" includes lands, waters, and private ways and any buildings and structures on such lands, waters, and private ways. (1963, c. 298.)

SUBCHAPTER IV. FISH AND FISHERIES.

(This subchapter IV is repealed effective Jan. 1, 1966.)

ARTICLE 12.

General Provisions for Administration.

§ 113-127. Definitions.

Cross Reference.—As to agents for distribution and sale of fishing licenses, see § 113-81.4 et seq.

Editor's Note.—Session Laws 1965, c. 957, repealed this subchapter IV, composed of articles 12 to 26, consisting of §§ 113-127 to 113-377.7, and substituted therefor a revised subchapter IV, entitled "Con-

servation of Fisheries Resources," composed of articles 12 to 24, consisting of §§ 113-127 to 113-321, which is set out in this Supplement immediately following this subchapter. As to the effective date of the repeal and the enactment of revised subchapter IV, see the Editor's note to § 113-127 of the new subchapter.

ARTICLE 13.

Powers and Duties of Board and Commissioners.

§ 113-136. Regulations as to fish, fishing, and fisheries.—The Board of Conservation and Development is hereby authorized to regulate, prohibit, or restrict in time, place, character, or dimensions, the use of nets, appliances, apparatus, or means employed in taking or killing fish; to regulate the seasons at which the various species of fish may be taken in the several waters of the State, and to prescribe the maximum numbers and minimum sizes of fish which may be taken in the said several waters of the State, or which may be bought, sold, or held in possession by any person, firm, or corporation in the State; and to make such rules regulating the shipment and transportation of fish, oysters, clams, crabs, scallops, and other water products, and all types of marine vegetation which may grow in the waters or on the bottoms of any navigable waters, as it may deem

(This subchapter IV is repealed effective Jan. 1, 1966.)

necessary; and all regulations, prohibitions, restrictions, and prescriptions, after due publication, which shall be construed to be at least once in some newspaper published in and having general circulation throughout the State, shall be of equal force and effect with the provisions of this section; and any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court: Provided, however, no rule or regulation shall be adopted by the Board of Conservation and Development which will require the culling of oysters taken or sold by the owner or his agents from his private bed during the closed season, on which private bed no oysters have been planted which have come from public grounds during the planting season. No rule or regulation shall be adopted by the Board of Conservation and Development or by the Wildlife Resources Commission acting under any authority conferred upon said Commission by G.S. 143-247 or any other law which will require the exclusive use of a float made of plastic or any other substance when fishing in any waters; provided that in regulating the technique known as "jug fishing" the Commission may restrict or prohibit the use of floats made of glass for such fishing. Neither the Department of Conservation and Development nor the Wildlife Resources Commission, acting pursuant to this section, shall limit the number of lines to be used by any fisherman in the public waters of the State provided that the Commission may regulate the number of such lines used in designated public mountain trout waters that have been posted as such and stocked with mountain trout at public expense. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251; 1963, c. 1097, s. 1; 1965, c. 718, s. 1.)

Local Modification.—Carteret: 1963, c. 404.

Editor's Note.—

Session Laws 1961, c. 1189, s. 10, provides that chapters 444 and 767, Session Laws of 1959, shall remain in full force and effect.

Session Laws 1961, c. 1189, s. 10, expressly preserved the local modification of this section applicable to Brunswick, New Hanover and Pender counties (1959, c. 444), and the limitation of the local modification concerning the taking of shrimp in certain coastal waters of Brunswick and Pender counties (1959, c. 767), against repeal by implication.

The 1963 amendment added the last two sentences. Section 2 of the amendatory act provides: "Nothing in this act shall be construed to confer upon the Board of

Conservation and Development any authority which it does not already possess by virtue of existing law."

The 1965 amendment substituted "due publication, which shall be construed to be at least once in some newspaper published in and having general circulation throughout the State, shall be of equal force" for "due publication, which shall be construed to be once a week for four consecutive weeks in some newspaper published in North Carolina, shall be of equal force" in the first sentence. Section 2 of the amendatory act provides that the provisions of the act shall in no way affect the requirements of article 18 of chapter 143 of the General Statutes relating to the filing of copies of rules and regulations with the Secretary of State and the clerks of superior court.

§ 113-136.1. Closing public oyster bottoms, shrimp breeding areas and polluted areas; taking oysters and shrimp for personal use and home consumption; closed seasons; unlawful taking; penalty for violation.—(a) The Board of Conservation and Development is hereby authorized to empower the Director, acting upon the advice of the Commissioner of Commercial Fisheries and the Director of the Institute of Fisheries Research, when in his and their opinion such action is necessary to promote the development of the oystering and shrimping industries and to effect proper conservation and management of sea food resources, to:

- (1) Close areas of public oyster bottoms, or to close breeding areas for shrimp during the breeding and growing seasons;

(This subchapter IV is repealed effective Jan. 1, 1966.)

- (2) Close public bottoms where oysters, oyster shells and other shells have been planted by or under the direction of the Board;
- (3) Close areas in which water pollution would render sea food products taken therefrom unsafe for human consumption.

(b) Except in such areas and during such seasons which may have been closed by the Director as authorized herein, shrimp and oysters may be taken by legal means for personal use and for home consumption exclusively, from the commercial fishing waters of this State at any time: Provided, however, that oysters may not be taken for any purpose on any Sunday and that oysters other than coon oysters may not be taken in June, July and August except as authorized by the Director.

(c) It shall be unlawful for any person, firm or corporation:

- (1) To take oysters or shrimp from closed areas, or during closed seasons, for any purpose, except as herein provided;
- (2) To take oysters for personal use for home consumption in excess of one bushel per person and five bushels per boat on not more than two days in any one week during the regular open oyster season, or to take any oysters by the use of dredges except during the regular open oyster season;
- (3) To place any oysters which have been taken during the regular closed season upon a private oyster bottom, except during those times which may be established by the Director for the taking of seed oysters from public bottom to be planted upon private beds;
- (4) To take oysters or shrimp during the regular closed seasons or in violation of any of the above laws;
- (5) To sell any oysters or shrimp which have been lawfully taken for personal use for home consumption as herein provided.

(d) Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned or both, in the discretion of the court. (1961, c. 1189, s. 1.)

Editor's Note.—The act inserting this section became effective Aug. 1, 1961.

§ 113-136.2. Exemption from special fishing license requirement.—

(a) Special fishing licenses for the use of special fishing devices as issued by the Wildlife Resources Commission under its authority to regulate, prohibit, or restrict in time, place, character, or dimensions the use of nets, appliances, apparatus, or means employed in taking or killing fish shall not be required in the following instances:

- (1) When a landing net meeting the requirements of subsection (b) is used to take non-game fish in the inland fishing waters of North Carolina.
- (2) When a landing net is used to assist in taking fish in the waters of North Carolina when the initial and primary method of taking is by the use of hook and line or rod and reel, provided, that license requirements applicable to the use of any hook and line or rod and reel are met.

(b) A landing net as authorized in subsection (a)(1) shall have a handle not exceeding eight feet in length and a hoop or frame to which the net is attached not exceeding sixty inches along its outer perimeter. The license exemption as to use of landing nets in inland fishing waters shall not be construed to apply to other special fishing devices the use of which is regulated by the Wildlife Resources Commission. (1963, c. 170.)

(This subchapter IV is repealed effective Jan. 1, 1966.)

§ 113-140.1. **Selling, offering for sale, transporting or possessing any sea food unlawfully taken in violation of chapter or regulations of Board.**—It shall be unlawful for any person to wilfully and knowingly sell or offer for sale, transport or offer to transport by any means whatsoever, or to have in his possession any sea food, including shellfish, crab, shrimp and finfish, which have been unlawfully taken in violation of the provisions of this chapter or in violation of any of the commercial fishing regulations of the Board of Conservation and Development, or upon which the license tax therefor has not been paid. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court; and, if a dealer or buy-boat owner or operator, shall be subject to have his license revoked as hereinafter provided in G. S. 113-377.01. (1961, c. 1189, s. 2.)

Editor's Note.—The act inserting this section became effective Aug. 1, 1961.

ARTICLE 13A.

Commercial Fisheries Advisory Board.

§ 113-142.2. **Creation; function, purpose and duty.**—The purpose of this article is to create a board to be known as the "Commercial Fisheries Advisory Board," the function, purpose and duty of which shall be to study all matters and activities in connection with the commercial fishing industry in the waters of North Carolina and to meet with and make recommendations to the commercial fisheries committee of the Board of Conservation and Development.

The Commercial Fisheries Advisory Board shall act as a liaison group between the commercial fishermen and the commercial fisheries committee of the Board of Conservation and Development. It shall consider all matters which may be referred to it for study by the commercial fisheries committee and it shall render a report in writing giving conclusions on each matter so referred. It shall originate its own studies on various matters which may be taken up with its members by commercial fishermen and it shall report on these matters to the commercial fisheries committee. It shall, through its chairman, keep in close contact with the commercial fisheries committee and bring to the attention of the committee all such matters as may be brought before the Advisory Board by fishermen and which do not require specific study but which may require decisions by the commercial fisheries committee. Aside from making recommendations to the commercial fisheries committee on matters referred to it the Board shall make recommendations to the commercial fisheries committee on all matters which are deemed relevant which may come to the attention of the various members of the Board through their contacts with the commercial fishermen and with the North Carolina Fishermen's Association. (1955, c. 1031, s. 1; 1963, c. 405, s. 1.)

Editor's Note. — The 1963 amendment added the second paragraph.

§ 113-142.6. **Organization and meetings.** — At its first meeting, the Board shall organize and elect a vice-chairman and a secretary.

The Board shall meet at the call of the chairman of the commercial fisheries committee of the Board of Conservation and Development, but in any case it shall meet with the commercial fisheries committee at each regular quarterly meeting of the Board of Conservation and Development. The chairman of the Board also shall have the authority after consultation with the members of the Board to call special meetings from time to time to consider such matters as may be brought before it by fishermen or referred to it by the commercial fisheries committee, and at all such meetings the chairman of the commercial fisheries committee or

(This subchapter IV is repealed effective Jan. 1, 1966.)

a member of the committee appointed by him shall be in attendance. (1955, c. 1031, s. 2; 1963, c. 405, s. 2.)

Editor's Note.—The 1963 amendment rewrote the second paragraph.

§ 113-142.7. **Compensation and expenses.**—The members of the Board shall receive not more than seven dollars (\$7.00) per diem and actual travel expenses while in attendance of meetings of the Board or engaged in the business of the Board; all travel expenses shall be paid in accordance with the provisions of the Executive Budget Act, article 1, of chapter 143, of the General Statutes of North Carolina. (1955, c. 1031, s. 2; 1963, c. 405, s. 3.)

Editor's Note. — The 1963 amendment substituted "seven dollars (\$7.00)" for "five dollars (\$5.00)" near the beginning of the section.

ARTICLE 14.

Licenses for Fishing in Inland Waters.

§ 113-143. **Fishing licenses for persons above 16 years of age; exception as to guests at private ponds.**—In order to raise revenue with which to maintain and operate the State fish hatcheries, provide additional nurseries and administer the inland fishing laws, a license is hereby required of all persons above the age of sixteen (16) years to fish by any and all methods of hook and line or rod and reel fishing in the waters of North Carolina. Provided, that fishing licenses shall not be required of persons who are the invited guests of the owners of private ponds, and who are fishing at the specific invitation of the owner. Private ponds are defined as bodies of water arising within and lying wholly upon the lands of a single owner or a single group of joint owners or tenants in common, and from which fish cannot escape, and into which fish of legal size cannot enter from public waters at any time. (1929, c. 335, s. 1; 1945, c. 567, s. 1; 1961, c. 312.)

Cross Reference.—As to agents for distribution and sale of fishing licenses, see § 113-81.4 et seq.

Editor's Note.—

The 1961 amendment added the proviso and the last sentence.

§ 113-143.1. **Special trout fishing license.**—A special mountain trout fishing license is required of all persons who fish in waters which are stocked with mountain speckled, brook, rainbow, or brown trout at the expense of the State, and which are designated by the North Carolina Wildlife Resources Commission as Public Mountain Trout Waters. A resident of this State may obtain a resident special mountain trout fishing license upon payment of one dollar (\$1.00) for the use of the Wildlife Resources Commission, and twenty-five cents (25¢) for the use of the issuing agent; and a nonresident may obtain a nonresident special mountain trout fishing license upon payment of three dollars (\$3.00) for the use of the Wildlife Resources Commission, and twenty-five cents (25¢) for the use of the issuing agent. Such license must be kept about the person of the licensee at all times while fishing in waters so designated. All monies received from the sale of special mountain trout fishing licenses, except the issuance fees, shall be deposited in the name of the State Treasurer, and shall be used by the Wildlife Resources Commission for propagation, protection, and management of such trout, and for no other purpose. (1953, cc. 432, 828; 1955, c. 198, s. 2; 1961, c. 834, s. 2.)

Editor's Note.—

The 1961 amendment increased some of the fees in the second sentence, such in-

crease to be charged on and after Jan. 1, 1962.

(This subchapter IV is repealed effective Jan. 1, 1966.)

§ 113-144. Resident State license. — Any person, upon application to the Director of the Department of Conservation and Development, his assistants, wardens, or agents, authorized in writing to issue licenses, and the presentation of satisfactory proof that he is a bona fide resident of the State of North Carolina, shall, upon payment of the sum of four dollars (\$4.00) as a license fee for the use of the Department and a fee of twenty-five cents (25¢) for the use of the official authorized to issue licenses, be entitled to a "resident State license" which will authorize the licensee to fish in any of the waters of North Carolina as provided under § 113-143: Provided that twenty-five cents (25¢) of this fee shall be set aside as a special fund for the purchase and lease of lands and waters, to be developed for the protection and propagation of fish or to be used for public fishing, or for the purpose of securing federal funds, if available, for the purposes described above through the means of matching federal funds in such proportion as the federal laws may require, and that twenty-five cents (25¢) of each such fee shall be expended by such Commission, in its discretion, for the purposes of enlarging, expanding and making more effective the work of the education and enforcement divisions of the North Carolina Wildlife Resources Commission. (1929, c. 335, s. 2; 1945, c. 567, s. 2; 1949, c. 1203, s. 2; 1957, c. 849, s. 2; 1961, c. 834, s. 3.)

Editor's Note.—

The 1961 amendment increased the fee charged on and after Jan. 1, 1962, to twenty-five cents, such increase to be of the official issuing the license from ten

§ 113-145. Nonresident State licenses.—Any person, without regard to age or sex, upon application to the Director of the Department of Conservation and Development, his assistants, wardens or agents authorized in writing to issue licenses, and the presentation of satisfactory proof that he is a nonresident of the State, shall, upon the payment of eight dollars (\$8.00) for the use of the Department and twenty-five cents (25¢) for the use of the official authorized in writing to issue licenses, be entitled to a "nonresident State fishing license" which will authorize the licensee to fish in any of the waters of North Carolina as provided under § 113-143: Provided, that fifty cents (50¢) of the "nonresident State fishing license" fee referred to above shall be set aside as a special fund for the purchase and lease of lands and waters to be developed for the protection and propagation of fish and for the acquisition by lease or purchase of waters for public fishing: Provided further, that any nonresident desiring to fish for one day or more shall be entitled to a nonresident daily fishing license upon payment of the sum of one dollar and fifty cents (\$1.50) for the use of the Wildlife Resources Commission and fifteen cents (15¢) for the use of the selling agent for each day; and that any nonresident desiring to fish for five days or less shall be entitled to a five-day fishing license upon the payment of the sum of three dollars and fifty cents (\$3.50) for the use of the Wildlife Resources Commission and twenty-five cents (25¢) for the use of the selling agent, and each such daily or five-day nonresident fishing license shall authorize the holder thereof to fish, during the period for which such license is issued, in any of the waters of North Carolina: Provided further, that any resident of the State desiring to fish for one day or more in the waters of any county in the State of North Carolina other than the county within which he resides may do so upon payment to the clerk of the court or game warden of a county in which he desires to fish the sum of eighty-five cents (85¢) for each day, the sum of ten cents (10¢) of said sum to go to the selling agent of said license or permit, and upon the payment of said sum of eighty-five cents (85¢), the clerk of the court or game warden shall issue a permit allowing said nonresident to fish: Provided further, that any nonresident twelve years of age or under regardless of sex shall be allowed to fish in the waters of North Carolina without paying any of the license or permit fees

(This subchapter IV is repealed effective Jan. 1, 1966.)

set forth in this section: Provided further that any nonresident holding a State license to fish in the inland waters of an adjoining state shall be allowed to fish in any waters of North Carolina which constitute the boundary between the State of North Carolina and said adjoining state upon presentation of said license when required by a wildlife protector, provided that said adjoining state extends the same privileges to persons holding licenses or permits to fish issued by the State of North Carolina. (1929, c. 335, s. 3; 1931, c. 351; 1933, c. 236; 1935, c. 478; 1945, c. 529, ss. 1, 2; 1945, c. 567, s. 3; 1953, c. 1147; 1955, c. 198, s. 1; 1959, c. 164; 1961, c. 834, ss. 4, 5.)

Editor's Note.—

The 1961 amendment increased the fees

in this section, such increase to be charged on and after Jan. 1, 1962.

§ 113-146. County licenses.—Any person who has lived in any county in North Carolina for a period of six months is deemed a resident of that county for the purpose of this section and upon application to the Director of the Department of Conservation and Development, his assistants, wardens, or agents authorized to issue licenses, and the presentation of satisfactory proof that he is a resident of the county, shall, upon the payment of one dollar and fifty cents (\$1.50) for the use of the Department and fifteen cents (15¢) for the use of the official authorized to issue licenses, be entitled to a "resident county fishing license," which will authorize the licensee to fish in any of the waters of that county: Provided, that said resident county license shall be required only of those persons using lures or baits of an artificial type. Artificial lures or baits are defined as lures or baits which are made by hand or manufactured and which are not available as natural fish foods. (1929, c. 335, s. 4; 1945, c. 567, s. 4; 1961, c. 834, s. 6.)

Editor's Note.—

The 1961 amendment increased the fees in this section, such increase to be charged on and after Jan. 1, 1962.

City Lake of Rocky Mount.—Session Laws 1961, c. 408, provides that the pro-

visions of this section shall not apply to bona fide residents of Nash and Edgecombe counties residing within the city limits of Rocky Mount while fishing in the city lake.

§ 113-146.1. Boundary water exemptions. — (a) Where county is bounded by a body of boundary water, residents of such county are deemed to be fishing within their own county for the purposes of the exemption contained in the proviso to § 113-146 if the fishing is done in such body of boundary water:

- (1) From the banks of such body within their own county or
- (2) While located on the surface of or in such body of boundary water.

(b) Where a municipality is bounded by a boundary river or stream, residents of the county in which the municipality is located may fish in the boundary river or stream from those banks of such river or stream in any adjoining county lying directly opposite to the banks of the municipality in question and be deemed fishing within their county for the purposes of the exemption contained in the proviso to § 113-146. The same is deemed true of fishing from the banks of any island in the boundary river or stream within the area opposite the banks of the municipality or municipalities.

(c) For the purposes of this section, a body of boundary water includes:

- (1) Boundary rivers and streams.
- (2) The open stretch of impounded waters of boundary rivers or streams lying along the course of a county boundary line.
- (3) The open stretch of lakes fed by a boundary river or stream through which a county boundary line passes.

(d) For the purposes of this section, a boundary river or stream is such portion of a river or stream which either forms a county boundary line or follows the

(This subchapter IV is repealed effective Jan. 1, 1966.)

course of such a line. Such line may follow the middle, thread, some former channel, the edge, or some other course in, along, under, or touching the waters of such river or stream so long as the course of the river or stream substantially represents or follows the course of such boundary line. (1965, c. 716.)

§ 113-147. Clerk of superior courts may sell licenses and account for same to Department.

Cross Reference.—As to agents for distribution and sale of fishing licenses, see § 113-81.4 et seq.

§ 113-152. Licenses to be kept about person of licensees; use of bow nets by persons other than licensee.—No person shall fish as provided herein in any of the waters of North Carolina unless the license hereinbefore provided for be kept about the person of the licensee or exhibited upon the request of any official charged with the duty and responsibility of issuing licenses and enforcing the fishing law. It is provided, however, that bow nets which have been properly licensed by the Wildlife Resources Commission may be used in inland waters designated for and used by persons other than the licensee with the said licensee's permission. (1929, c. 335, s. 10; 1945, c. 567, s. 6; 1961, c. 329.)

Editor's Note.—

The 1961 amendment added the second sentence.

ARTICLE 15A.

Licenses and Taxes on Commercial Fisheries.

§ 113-174.7. Regulation and licensing of commercial fishing boats.—Commercial fishing boats, for the purposes of this article and for the purposes of chapter 75A, entitled "Motorboats," are defined as motorboats which are used primarily for commercial fishing operations from which operations the owners and/or operators thereof derived more than one half of their gross incomes during the preceding calendar year. There is hereby levied annually upon each commercial fishing boat and all other types of boats such as trawl boats, dredge boats, motorboats, and haul boats, using commercial fishing equipment used in the commercial fishing waters of this State a tax as follows:

- (1) A tax of one dollar (\$1.00) each on boats and skiffs without motors of any type up to and including eighteen (18) feet in overall length.
- (2) A tax of three dollars (\$3.00) each on motorboats up to and including eighteen (18) feet in overall length.
- (3) A tax of fifty cents (50¢) per foot of overall length on boats having an overall length in excess of eighteen (18) feet and up to and including twenty-six (26) feet.
- (4) A tax of seventy-five cents (75¢) per foot of overall length on boats having an overall length in excess of twenty-six (26) feet. (1953, c. 1134; 1955, c. 888, s. 3; 1961, c. 1004.)

Editor's Note.—

Former § 113-174.7, relating to license boats and haul boats, was repealed by Session Laws 1961, c. 1004, effective Jan. 1, 1962, which inserted the present section.

§ 113-174.8. Taking of seafood for personal or family use and consumption.—No tax prescribed in G. S. 113-174.7 shall be levied or collected from any bona fide resident or citizen of this State as a result of the taking of fish, crabs, or shrimp for the personal or family use and consumption of the taker, and no tax prescribed by G. S. 113-174.7 shall be levied upon oysters, clams or scallops, or a combination of these shellfish when such shellfish are taken in a quantity not exceeding one bushel in one day, and for the taker's own personal

(This subchapter IV is repealed effective Jan. 1, 1966.)

or family use and consumption. No tax prescribed in G. S. 113-174.7 shall be levied or collected from any bona fide resident or citizen of this State upon any boat, or boats, employed solely for his personal or his family's use, upon which there is no motor, either inboard or outboard, if such boat is employed for taking seafood products for personal or family use and consumption exclusively and in accordance with provisions of law, and if such boat is not, at any time, employed to take more than one bushel of shellfish per day during the seasons when shellfish may lawfully be taken. It shall be unlawful for any person to sell or offer to sell any seafood taken exclusively for home consumption, and under the tax exclusion granted by this section, and if any person shall be convicted of selling or offering to sell such seafood, he shall be guilty of a misdemeanor and shall be fined not less than five dollars (\$5.00) or imprisoned not less than thirty (30) days.

Nothing in this section shall be construed to permit the taking of any shellfish, shrimp, crabs or fin fish during any closed season which is, or may be established thereon. (1953, c. 1134; 1955, c. 888, s. 3½; 1963, c. 810, ss. 1, 2.)

Editor's Note.—

The 1963 amendment rewrote this section.

ARTICLE 15B.

Commercial License Regulations.

§ 113-174.9. Printed regulations furnished.

Editor's Note.—The above catchline has been reprinted to correct an error.

§ 113-174.10. **Dealers to keep and furnish statistics.**—All persons, firms, or corporations engaged in buying, packing, canning, or shipping oysters, scallops, clams, shrimp, hard and soft crabs, and fish taken from the public grounds or natural bed of the State, or the natural waters or streams of the State, shall keep a permanent record of all such products, showing the quantity of each product so purchased, packed, canned, or shipped. All such records shall be open at all times to the Commissioner, assistant commissioner, or anyone under the direction of the Commissioner. (1953, c. 1134; 1961, c. 1189, s. 3.)

Editor's Note.—The 1961 amendment, effective Aug. 1, 1961, inserted in line three the words "hard and soft crabs."

§ 113-174.15. **Operation of boat or appliance in violation of rules or laws; revocation of license; seizure of boat and apparatus.**—If any person, firm, or corporation shall use or operate any boat or appliance of any kind, in violation of any rule of the Board, or any of the fish laws, it shall be the duty of the Commissioner of Commercial Fisheries to revoke any license issued and seize the boat and any apparatus or appliance so used or operated for use in evidence in any trial for violation of such rules or laws. Pending trial for such violation, the owner of such boat or appliance may retain possession thereof by posting bond with good and sufficient surety for the delivery of such boat and/or appliance as may be required for use in evidence in the trial for such violation and such boat or appliance shall be returned to the owner thereof by the Commissioner upon conclusion of such trial. (1953, c. 1134; 1961, c. 1189, s. 4.)

Editor's Note.—The 1961 amendment, effective Aug. 1, 1961, rewrote all of this section following the word "operated" in line five.

(This subchapter IV is repealed effective Jan. 1, 1966.)

ARTICLE 16.

Shellfish; General Laws.

§ 113-176. **Board may lease or decline to lease; applicants to certify as to commercial purposes.**—The Board shall have power to lease, or to decline to lease to any duly qualified person, firm or corporation, for purposes of oyster or clam culture, any bottom of the waters of the State not a natural oyster bed, as defined in this article, nor a clam reservation, as defined in this article, in accordance with the provisions of this article. Leases shall not be granted except to such applicants who have filed with the Board a certificate in writing stating that the purpose of obtaining the lease shall be to enter into production of oysters in commercial quantities, and that the purpose is not to raise oysters solely for private use. (1909, c. 871, ss. 1, 9; 1919, c. 333, s. 6; C. S., s. 1903; 1963, c. 1260, s. 1.)

Editor's Note. — The 1963 amendment inserted in the first part of the first sentence the words "or to decline to lease" and also added the second sentence.

§ 113-180. **Execution of lease; notice and filing; marking and planting.**—Immediately upon the completion of the survey and the mapping thereof, and the payment by the applicant of the cost of said survey and map, the Commissioner of Commercial Fisheries may, if the application is approved, execute to the applicant, upon a form approved by the Attorney General of the State, a lease for the bottoms applied for. A copy of the lease, map of the survey and a description of the bottom, defining its position, shall be filed in the office of the Commissioner. After the execution of said lease, the lessee shall have the sole right and use of said bottoms, and all shells, oysters and culls thereon or placed thereon shall be his exclusive property so long as he complies with the provisions of this law. The lessee shall stake off and mark the bottoms leased in the manner prescribed by the Commissioner, and failure to do so within a period of thirty days of an order so to do issued by the Commissioner shall subject said lessee to a fine of five dollars per acre for each sixty days' default in compliance with said order. The corner stakes, at least, of each lease shall be marked with signs plainly displaying the number of the lease and the name of the lessee. The lessee shall, within two years of the commencement of his lease, have planted upon his holdings a quantity of shells equal to an average of fifty bushels of seed oysters or shells per acre of holdings, and within four years from the commencement of his lease a quantity of oysters or shells equal to an average of not less than one hundred and twenty-five bushels per acre. The Commissioner shall, upon granting any lease, publish a notice of the granting of same in a newspaper of general circulation in the county wherein the bottom leased is located. (1909, c. 871, ss. 4, 9; 1919, c. 333, s. 6; C. S., s. 1907; 1963, c. 1260, s. 2.)

Editor's Note. — The 1963 amendment deleted the word "shall" after the word "Fisheries" in the first sentence and inserted in lieu thereof the words "may, if the application is approved."

§ 113-181. **Term and rental; cancellation of lease.** — All leases made under the provisions of this article shall begin upon the issuance of the lease, and shall expire on the first day of April of the twentieth year thereafter. The rental shall be at the rate of fifty cents per acre per year for the first ten years and one dollar per acre for the next ten years of the lease, payable annually in advance on the first day of April of each year: Provided, that in the open waters of Pamlico Sound (and for the purposes of this article the open waters of Pamlico Sound shall mean the waters that are outside the four miles of the shore line) the rental shall be at the rate of fifty cents per acre per year for the first three years, one dollar per acre per year for the next seven years, and two dollars per

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acre per year for the next ten years, of the lease. The rental for the first year shall be paid in advance, to an amount proportional to the unexpired part of the year to the first of April next succeeding. Any lease granted under the provisions of this article after June 26, 1963, may be canceled by the Department of Conservation and Development if the lessee fails to diligently use the bottoms covered by the said lease for the production of oysters in commercial quantities (1909, c. 871, ss. 5, 9; 1919, c. 333, s. 6; C. S., s. 1908; 1933, c. 346; 1953, c. 1139; 1963, c. 1260, s. 3.)

Editor's Note.—

The 1963 amendment added the last sentence.

§ 113-207. Failure to stop and show license.—If any person using a boat or vessel for the purpose of catching oysters shall refuse to stop and have his oysters inspected or exhibit his license when commanded to do so by the Commissioner of Commercial Fisheries, assistant commissioner or any inspector, he shall be guilty of a misdemeanor and be fined not less than twenty-five dollars nor more than fifty dollars. (1903, c. 516, s. 26; Rev., s. 2389; C. S., s. 1937; 1961, c. 1189, s. 4½.)

Editor's Note.—The 1961 amendment, and three the words "have his oysters inspected or."

§ 113-210.2. Transportation of unlawful fishing devices upon commercial fishing boats.—It shall be unlawful for any person, firm or corporation to knowingly transport aboard any commercial fishing vessel licensed in this State, and which is employed or has been employed in commercial fishing within the waters of North Carolina, any dredge weighing more than one hundred (100) pounds, or any commercial fishing equipment, the use of which is prohibited by law in the waters in which such vessel is, or has been employed in commercial fishing operations. Violation of this section shall constitute a misdemeanor, punishable in the discretion of the court. (1963, c. 452.)

Editor's Note.—The act inserting this section became effective July 26, 1963.

§ 113-211. Unloading at factory or to a conveyance on Sunday or at night.—If any person shall unload any oysters from any boat, vessel or car at any factory or house for shipping, shucking or canning oysters or from such boat or vessel to a truck, car or other means of conveyance, on Sunday, or after sunset or before sunrise, he shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court: Provided, whenever any boat or vessel shall have partially unloaded or discharged its cargo before sunset, the remainder of said load or cargo may be discharged in the presence of an inspector. (1903, c. 516, s. 16; Rev., s. 2394; C. S., s. 1941; 1961, c. 1189, ss. 5, 6.)

Editor's Note.—The 1961 amendment, car or other means of conveyance." It effective Aug. 1, 1961, inserted the words further rewrote the provision as to fine "or from such boat or vessel to a truck, or imprisonment.

§ 113-213. Sale or purchase of uncultured oysters.—If any person shall sell or offer for sale, transport or offer to transport out of the State, or from one point in the State to another, or have in his possession any oysters which have not been properly culled according to law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days, and, if a dealer or buy-boat owner or operator, shall have any commercial fisheries license which has been issued to him suspended in accordance with the provisions of G. S. 113-377.01. It is unlawful for any person, firm or corporation to pur-

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chase oysters which have not been properly culled according to law, and for each violation he shall upon conviction be fined two hundred dollars or be imprisoned in the discretion of the court. (1903, c. 516, s. 3; Rev., s. 2392; 1907, c. 969, ss. 5, 13; C. S., s. 1943; 1961, c. 1189, s. 7.)

Local Modification.—By virtue of Session Laws 1963, c. 611, Onslow should be stricken from the replacement volume. effective Aug. 1, 1961, added at the end of the first sentence the provision as to dealer or buy-boat owner or operator.

Editor's Note.—The 1961 amendment,

§ 113-214. Boat captain's purchase of uncultured oysters. — The captain of any run or buy-boat who shall purchase oysters which have not been properly culled according to law shall upon conviction be fined two hundred dollars or imprisoned in the discretion of the court, and the having of uncultured oysters aboard of his boat shall be prima facie evidence of his having purchased them; and shall have any commercial fisheries license issued to him revoked in accordance with the provisions of G. S. 113-377.01. (1907, c. 969, ss. 5, 13; C. S., s. 1944; 1961, c. 1189, s. 8.)

Editor's Note.—The 1961 amendment, effective Aug. 1, 1961, rewrote this section.

§ 113-216. Injury to private grounds; work at night.—If any person shall wilfully commit any trespass or injury with any instrument or implement upon any ground upon which shellfish are being raised or cultivated, or shall remove, destroy or deface any mark or monument lawfully set up for the purpose of marking any grounds, or shall work on any oyster ground at night, he shall be guilty of a misdemeanor. But nothing in the provisions of this section shall be construed as authorizing interference with the capture of migratory fishes or free navigation or the right to use on any private grounds any method or implement for the taking, growing or cultivation of shellfish.

It shall be unlawful for any person, firm or corporation to wilfully damage, remove, deface, or destroy any sign, marker, or identifiable monument from any leased or privately-owned oyster and clam beds. Any person who shall be convicted of violation of the provisions of this paragraph shall be imprisoned for not more than thirty (30) days or fined not less than fifty dollars (\$50.00), or shall be subject to both imprisonment and fine in the discretion of the court. (1887, c. 119, s. 11; Rev., s. 2402; C. S., s. 1946; 1963, c. 645.)

Editor's Note. — The 1963 amendment added the last paragraph.

ARTICLE 18.

Propagation of Oysters.

§ 113-223. Marking boundary of planted grounds; protection. — It shall be the duty of the said Board to plainly and clearly mark and define the limits and boundaries of any territory which may be planted with oyster propagating materials under the provisions of this article. The said Board may prohibit the taking of any oysters from any such territory or area for such length of time as the Board may determine, and the said Board may regulate the manner of such taking as the said Board may determine: Provided, that the said Board shall prohibit any taking of oysters from any territory or area so planted for at least two years after such planting. It shall be unlawful for any person, firm or corporation to take or attempt to take fish, crabs, shrimp, clams, or other seafood from the waters over marked oyster beds which have been planted or closed during the period for which they have been closed: Provided, this prohibition shall not apply to the use of crab pots, hand lines, trot lines, drop nets, set nets or any type

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of sport fishing with rod and reel and/or hook and line. (1921, c. 132, s. 5; C. S., s. 1959(e); 1963, c. 554.)

Local Modification. — New Hanover: 1963, c. 554.

Editor's Note. — The 1963 amendment added the last sentence.

ARTICLE 21

Commercial Fin Fishing; General Regulations.

§ 113-247. **Sunday fishing.**—If any person fish on Sunday with a seine, drag-net or other kind of net, he shall be guilty of a misdemeanor, and fined not more than fifty dollars; provided, however, that the provisions of this section shall apply only to inland waters under the jurisdiction of the Wildlife Resources Commission, and shall not apply to any waters classified as commercial fishing waters or to the canals draining Lake Phelps in Washington and Tyrrell counties and the waters of Tar River in Pitt County, and to the waters of Tar River in Edgecombe County, as provided for by regulations of the Wildlife Resources Commission permitting the use of nets for taking non-game fish; provided, further, that this section shall not apply to the taking of rockfish and any other non-game fish with skim and dip nets used in accordance with regulations of the Wildlife Resources Commission on that portion of the Roanoke River between the highway bridge on U. S. Highway No. 301 at Weldon and the highway bridge on U. S. Highway No. 258 north of Scotland Neck. The provisions of this section shall not apply to Beaufort, Bertie, Chowan, Craven, Duplin, Gaston, Gates, Hertford, Jones, Martin, Mecklenburg, Northampton, Pender, Pitt, Tyrrell, Washington and Wayne counties, nor to portions of streams adjoining said counties. (1883, c. 338; Code, s. 1116; Rev., s. 3841; C. S., s. 1970; 1933, c. 438; 1951, c. 1045, s. 1; 1955, c. 706; 1959, c. 274, ss. 1, 2; c. 291; 1961, cc. 330, 745; 1963, cc. 89, 202; 1965, cc. 76, 142, 354.)

Editor's Note.—

The first 1961 amendment inserted "Martin" in the last sentence, and the second 1961 amendment inserted "Beaufort, Bertie, Chowan, Gates and Hertford" therein.

The first 1963 amendment added "Tyrrell" and "Washington" to the list of coun-

ties in the last sentence. The second 1963 amendment inserted "Northampton" therein.

The first 1965 amendment inserted "Jones," the second 1965 amendment inserted "Pitt," and the third 1965 amendment inserted "Duplin," "Pender" and "Wayne" in the last sentence.

ARTICLE 23.

Propagation of Fish.

§ 113-257. **Erection of dams, ponds, etc.**—No dams, ponds, or other devices which will prevent the free migration of fish shall be erected or placed by a person licensed under this article, in any stream, flowing over his property. No person shall use the ponds so licensed for any purpose other than for commercial fish purposes. Provided that bodies of water arising within and lying wholly upon the lands of a single owner or a single group of joint owners or tenants in common, and from which fish cannot escape, and into which fish of legal size cannot enter from public waters at any time, shall be known and designated as private ponds. The Wildlife Resources Commission is hereby authorized to issue permits to such owners of such private ponds to take from such private ponds game fish and sell the same under such regulations as the said Commission may deem appropriate and consistent with sound conservation policies. Nothing in this section shall be construed to authorize the sale of such game fish for any purpose other than for sale from private ponds under proper permit, regulation and control of the said Commission, and for propagation purposes: Provided that the

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North Carolina Wildlife Resources Commission is hereby authorized by appropriate rules and regulations to license the operation of commercial trout fishing ponds and to revoke such licenses for cause. "Commercial trout fishing pond" is defined as an artificial impoundment of three acres or less lying on private land and not on a natural stream, but which may be supplied from such stream by the diversion and storage of water through screened and regulated supply lines, which pond shall be stocked exclusively with hatchery-reared mountain trout obtained from a privately-owned hatchery for the purpose of commercial angling. For each calendar year or part thereof which any licensee operates, said licensee shall pay to the Wildlife Resources Commission an annual license fee of twenty-five dollars (\$25.00) for each pond, and such annual license shall be issued only upon the payment of said twenty-five dollars (\$25.00). (1929, c. 198, s. 3; 1953, c. 794; 1959, c. 988; 1961, c. 357.)

Editor's Note.—

The 1961 amendment deleted the words "for propagation purposes only" from line eleven and substituted therefor the words "under such regulations as the said Commission may deem appropriate and

consistent with sound conservation policies." The amendment also inserted in the next sentence the words "for sale from private ponds under proper permit, regulation and control of the said Commission, and for."

ARTICLE 25A.

Revocation of Commercial Fisheries Licenses.

§ 113-377.01. **Revocation for conviction of violation of certain statutes or rules and regulations of the Board of Conservation and Development.**—Any dealer, buy-boat owner or operator, shucking house operator, or other person engaged in the business of buying or transporting sea food products who shall have been convicted of a violation of any of the provisions of articles 15A, 15B, 16, 18, 20, 21, 24 and 25 of this chapter, or violation of any of the rules and regulations of the Board of Conservation and Development pertaining to commercial fisheries operations, may, upon conviction for a first offense, have any commercial fishing or commercial fisheries license which may have been issued to him by the Commissioner of Commercial Fisheries or by the Board of Conservation and Development revoked for a period of not less than thirty (30) days in addition to such other sentence as may have been imposed; upon conviction of a second offense or violation of the laws or regulations as above set forth, such person shall have his license suspended for a period of not less than six (6) months. The Director of the Department of Conservation and Development is authorized and empowered to suspend such license upon conviction as hereinabove set forth. (1961, c. 1189, s. 9.)

Editor's Note.—The act inserting this section became effective Aug. 1, 1961.

SUBCHAPTER IV. CONSERVATION OF FISHERIES RESOURCES.

(This subchapter IV is not effective until Jan. 1, 1966.)

ARTICLE 12.

General Definitions.

§ 113-127. **Application of article.**—Unless the context clearly requires otherwise, the definitions in this article apply throughout this subchapter. (1965, c. 957, s. 2.)

Editor's Note. — Session Laws 1965, c. 957, repealed former subchapter IV of this chapter, entitled "Fish and Fisheries," composed of former articles 12 to 26, con-

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sisting of §§ 113-127 to 113-377.7, and substituted therefor a revised subchapter IV, entitled "Conservation of Fisheries Resources," composed of present articles 12 to 24, consisting of §§ 113-127 to 113-321. Former article 26, relating to the Marine Fisheries Compact and Commission, and consisting of former §§ 113-377.1 to 113-377.7, was transferred to present article 19 by the act and appears as present §§ 113-252 to 113-258. Sections 19 and 21 of the act provide:

"Sec. 19. In the process of repealing the existing subchapter IV of the General Statutes and all special, local, and private acts and ordinances regulating the conservation of marine and estuarine resources, the repeal of acts which themselves repeal former acts is not intended to revive the former acts.

"Sec. 21. The provisions of this act become fully effective on January 1, 1966.

§ 113-128. Definitions relating to agencies and their powers.—The following definitions apply to powers and administration of agencies charged with the conservation of marine and estuarine and wildlife resources.

Advisory Board: Commercial and Sports Fisheries Advisory Board.

Board: Board of Conservation and Development.

Commercial and Sports Fisheries Advisory Board: The Board described in article 18 of this subchapter. Except as the Advisory Board may be constituted differently from the former Commercial Fisheries Advisory Board so as to make the reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to the Commercial Fisheries Advisory Board apply to the Commercial and Sports Fisheries Advisory Board.

Commercial and Sports Fisheries Committee: Commercial and Sports Fisheries Committee, Board of Conservation and Development. All references in statutes, regulations, contracts, and other legal or official documents to the Commercial Fisheries Committee of the Board of Conservation and Development apply to the Commercial and Sports Fisheries Committee.

Commercial and Sports Fisheries Inspector: The Commissioner and every other employee of the Division of Commercial and Sports Fisheries sworn in as an officer and assigned to duties which include exercise of law enforcement powers. All references in statutes, regulations, contracts, and other legal or official documents to commercial fisheries inspectors apply to Commercial and Sports Fisheries Inspectors.

Commission: North Carolina Wildlife Resources Commission.

Commissioner: Commissioner of Commercial and Sports Fisheries, Department of Conservation and Development. All references in statutes, regulations, contracts, and other legal or official documents to the Commissioner of Commercial Fisheries apply to the Commissioner of Commercial and Sports Fisheries.

Department: Department of Conservation and Development. Unless the context otherwise indicates, general references to the Department include the Board as well as the Department.

Director: Director, Department of Conservation and Development.

Division of Commercial and Sports Fisheries: Division of Commercial and Sports Fisheries, Department of Conservation and Development. All references in statutes, regulations, contracts, and other legal or official documents to the Division

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of Commercial Fisheries of the Department of Conservation and Development apply to the Division of Commercial and Sports Fisheries.

Executive Director: Executive Director, North Carolina Wildlife Resources Commission.

Inspector: Commercial and sports fisheries inspector.

Notice; Notify: Where it is required that notice be given an agency of a situation within a given number of days, this places the burden on the person giving notice to make sure that the information is received in writing by a responsible member of the agency within the time limit.

Protector: Wildlife protector.

Wildlife Protector: Every employee of the Commission sworn in as an officer and assigned to duties which include exercise of law enforcement powers. (1965, c. 957, s. 2.)

§ 113-129. Definitions relating to resources.—The following definitions apply in the description of the various marine and estuarine and wildlife resources:

Bushel: A dry measure containing 2,150.42 cubic inches.

Coastal Fisheries: Any and every aspect of cultivating, taking, possessing, transporting, processing, selling, utilizing, and disposing of fish taken in coastal fishing waters, whatever the manner or purpose of taking, except for the regulation of inland game fish in coastal fishing waters which is vested in the Commission; and all such dealings with fish, wherever taken or found, by a person primarily concerned with fish taken in coastal fishing waters so as to be placed under the administrative supervision of the Department. Provided, that the Department is given no authority over the taking of fish in inland fishing waters. Except as provisions in this subchapter or in regulations of the Board authorized under this subchapter may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fisheries apply to coastal fisheries.

Coastal Fishing: All fishing in coastal fishing waters. Except as provisions in this subchapter or in regulations of the Board authorized under this subchapter may make such references inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing apply to coastal fishing.

Coastal Fishing Waters: The Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department and the Commission. Except as provisions in this subchapter or changes in the agreement between the Department and the Commission may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing waters apply to coastal fishing waters.

Crustaceans: Crustacea, specifically including shrimp and hard and soft-shelled crabs.

Fisheries Resources: Marine and estuarine resources and such wildlife resources as relate to fish.

Fish; Fishes: All marine mammals; all shellfish; all crustaceans; and all other fishes.

Game Fish: Inland game fish and such other game fish in coastal fishing waters as may be regulated by the Department.

Inland Fishing Waters: All inland waters except private ponds; and all waters connecting with or tributary to coastal sounds or the ocean extending inland from the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department and the Commission.

Inland Game Fish: Those species of fresh-water fish, wherever found, and migratory salt-water fish, when found in inland fishing waters, as to which there is

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an important element of sport in taking and which are denominated as game fish in the regulations of the Commission. No species of fish of commercial importance not classified as a game fish in commercial fishing waters as of January 1, 1965, may be classified as an inland game fish in coastal fishing waters without the concurrence of the Department.

Marine and Estuarine Resources: All fish, except inland game fish, found in the Atlantic Ocean and in coastal fishing waters; all fisheries based upon such fish; all uncultivated or undomesticated plant and animal life, other than wildlife resources, inhabiting or dependent upon coastal fishing waters; and the entire ecology supporting such fish, fisheries, and plant and animal life.

Nongame Fish: All fish found in inland fishing waters other than inland game fish.

Private Pond: A body of water arising within and lying wholly upon the lands of a single owner or a single group of joint owners or tenants in common, and from which fish cannot escape, and into which fish of legal size cannot enter from public waters at any time.

Shellfish: Mollusca, specifically including oysters, clams, mussels, and scallops.

Wild Animals: Game animals; fur-bearing animals; and such other wild mobile creatures included in the definition of wildlife resources which in the discretion of the Commission need protection or regulation in the interests of conservation of wildlife resources.

Wildlife: Wild animals; wild birds; all fish found in inland fishing waters; and inland game fish. Unless the context clearly requires otherwise, the definitions of wildlife, wildlife resources, wild animals, wild birds, fish, and the like are deemed to include species normally wild, or indistinguishable from wild species, which are raised or kept in captivity.

Wildlife Resources: All wild birds; all wild mammals other than marine mammals found in coastal fishing waters; all fish found in inland fishing waters, including migratory salt-water fish; all inland game fish; all uncultivated or undomesticated plant and animal life inhabiting or dependent upon inland fishing waters; waterfowl food plants wherever found, except that to the extent such plants in coastal fishing waters affect the conservation of marine and estuarine resources the Department is given concurrent jurisdiction as to such plants; all undomesticated terrestrial creatures; and the entire ecology supporting such birds, mammals, fish, plant and animal life, and creatures. (1965, c. 957, s. 2.)

§ 113-130. Definitions relating to activities of public.—The following definitions apply to activities of the public in regard to marine and estuarine and wildlife resources:

Individual: A human being.

Owner; Ownership: As for personal property refers to persons having beneficial ownership and not to those holding legal title for security; as for real property, refers to persons having the present right of control, possession, and enjoyment, whether as life tenant, fee holder, beneficiary of a trust, or otherwise. Provided, that this definition does not include lessees of property except where the lease arrangement is a security device to facilitate what is in substance a sale of the property to the lessee.

Person: Any individual; or any partnership, firm, association, corporation, or other group of individuals capable of suing or being sued as an entity.

Resident: In the case of individuals, one who is domiciled in North Carolina, except those domiciled for less than six months; or an individual who at the time in question is living and has for the previous six months been living in North Carolina, without regard to his actual domicile; in the case of corporations, a

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corporation which is chartered under the laws of North Carolina and has its principal office within the State.

To Fish: To take fish.

To Sell; Sale: Includes a sale or exchange of property, or an offer or attempt to sell or exchange—for money or any other valuable consideration.

To Take: All operations during, preparatory, and subsequent to an attempt—whether successful or not—to capture, kill, pursue, or otherwise harm or reduce to possession any fisheries resources.

Vessel: Every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water. (1965, c. 957, s. 2.)

ARTICLE 13.

Jurisdiction of Fisheries Agencies.

§ 113-131. **Resources belong to public; stewardship of conservation agencies.**—The marine and estuarine and wildlife resources of the State belong to the people of the State as a whole. The Department and the Commission are charged with stewardship of these resources. (1965, c. 957, s. 2.)

§ 113-132. **Jurisdiction of fisheries agencies.**—(a) The Department has jurisdiction over the conservation of marine and estuarine resources. Except as may be otherwise provided by law, it has jurisdiction over all activities connected with the conservation and regulation of marine and estuarine resources.

(b) The Commission has jurisdiction over the conservation of wildlife resources. Except as may be otherwise provided by law, it has jurisdiction over all activities connected with the conservation and regulation of wildlife resources.

(c) Notwithstanding the provisions of this article, the Department and the Commission do not have jurisdiction over matters with respect to which jurisdiction may now or hereafter be vested in the Board and Department of Water Resources, the State Stream Sanitation Committee, or the State Board of Health.

(d) To the extent that the grant of jurisdiction to the Department and the Commission may overlap, the Department and the Commission are granted concurrent jurisdiction. In cases of conflict between actions taken or regulations promulgated by either agency, as respects the activities of the other, pursuant to the dominant purpose of such jurisdiction, the Department and the Commission are empowered to make agreements concerning the harmonious settlement of such conflict in the best interests of the conservation of the marine and estuarine and wildlife resources of the State. In the event the Department and the Commission cannot agree, the Governor is empowered to resolve the differences.

(e) Those coastal fishing waters in which are found a significant number of fresh-water fish, as agreed upon by the Department and the Commission, may be denominated joint fishing waters. Such waters are deemed coastal fishing waters from the standpoint of laws and regulations administered by the Department and are deemed inland fishing waters from the standpoint of laws and regulations administered by the Commission. The Board and the Commission may make joint regulations governing the responsibilities of each agency and modifying the applicability of licensing and other regulatory provisions as may be necessary for rational and compatible management of the marine and estuarine and wildlife resources in such joint fishing waters.

(f) The granting of jurisdiction in this section pertains to the power of agencies to enact regulations and ordinances. Nothing in this section or in § 113-138 is designed to prohibit law enforcement officers who would otherwise have jurisdiction from making arrests or in any manner enforcing the provisions of this subchapter. (1965, c. 957, s. 2.)

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§ 113-133. Abolition of local coastal fishing laws.—The enjoyment of the marine and estuarine resources of the State belongs to the people of the State as a whole and is not properly the subject of local regulation. As the Department is charged with administering the governing statutes and promulgating regulations in a manner to reconcile as equitably as may be the various competing interests of the people as regards these resources, considering the interests of those whose livelihood depends upon full and wise use of renewable and non-renewable resources and also the interests of the many whose approach is recreational, all special, local, and private acts and ordinances regulating the conservation of marine and estuarine resources are repealed. Nothing in this section is intended to invalidate local legislation or local ordinances which exercise valid powers over subjects other than the conservation of marine and estuarine resources, even though an incidental effect may consist of an overlapping or conflict of jurisdiction as to some particular provision not essential to the conservation objectives set out in this subchapter. (1965, c. 957, s. 2.)

Cross Reference. — As to repeal of and estuarine resources not reviving acts special, local and private acts and ordinances repealed by them, see Editor's note to § 113-127.

§ 113-134. Regulations.—The Department and the Commission are empowered to promulgate regulations implementing the provisions of this chapter, within the limits of the jurisdiction granted in this article. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2.)

§ 113-135. General penalty for violating subchapter or regulations.—Any person who violates any provision of this subchapter or any regulation adopted by the Department or the Commission pursuant to the authority of this subchapter is guilty of a misdemeanor. Unless a different level of punishment is elsewhere set out, anyone convicted of such a misdemeanor may be fined not exceeding fifty dollars (\$50.00). Noncriminal sanctions, such as license revocation or suspension, and exercise of powers auxiliary to criminal prosecution, such as seizure of property involved in the commission of an offense, do not constitute alternative levels of punishment so as to oust criminal liability. (1965, c. 957, s. 2.)

§ 113-136. Enforcement authority of inspectors and protectors; refusal to obey or allow inspection by inspectors and protectors.—(a) Inspectors and protectors are granted the powers of peace officers anywhere in this State in enforcing all matters within their respective subject-matter jurisdiction as set out in this section.

(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department as set out in this subchapter and to all other matters within the jurisdiction of the Division of Commercial and Sports Fisheries.

(c) The jurisdiction of protectors extends to all matters within the jurisdiction of the Commission, whether set out in this chapter, chapter 75A, chapter 143, or elsewhere.

(d) Inspectors and protectors are additionally authorized to arrest without warrant under the terms of § 15-41 for felonies, for breaches of the peace, for assaults upon them or in their presence, and for other offenses evincing a flouting of their authority as enforcement officers or constituting a threat to public peace and order which would tend to subvert the authority of the State if ignored. In particular, they are authorized, subject to the direction of their administrative superiors, to arrest for violations of §§ 14-223, 14-224, 14-225, 14-269, and 14-277.

(e) Inspectors and protectors may serve warrants, subpoenas, and other process connected with any cases within their subject-matter jurisdiction. In the

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exercise of their law enforcement powers, inspectors and protectors are subject to provisions relating to police officers in general set out in chapter 15 and elsewhere.

(f) Inspectors and protectors are authorized to stop temporarily any persons they reasonably believe to be engaging in activity regulated by their respective agencies to determine whether such activity is being conducted within the requirements of the law, including license requirements. If the person stopped is in a motor vehicle being driven at the time and the inspector or protector in question is also in a motor vehicle, the inspector or protector is required to sound a siren or activate a special light, bell, horn, or exhaust whistle approved for law enforcement vehicles under the provisions of § 20-125 (b) or 20-125 (c).

(g) Protectors may not temporarily stop or inspect vehicles proceeding along primary highways of the State without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the Commission. Inspectors may temporarily stop vehicles, boats, airplanes, and other conveyances upon reasonable grounds to believe that they are transporting taxable seafood products; they are authorized to inspect any seafood products being transported to determine whether they were taken in accordance with law and to require exhibition of any applicable licenses, tax receipts, permits, bills of lading, or other identification required to accompany such seafood products.

(h) The refusal of any person to stop in obedience to the implicit or explicit directions of an inspector or protector acting under the authority of this section is unlawful. It is unlawful to refuse to exhibit upon request any license, permit, tax receipt, certificate, or identification required to be carried by any law or regulation as to which inspectors and protectors have enforcement jurisdiction. It is unlawful to refuse to allow inspectors and protectors to inspect weapons, equipment, fish, or wildlife regulated by any law or regulation as to which inspectors and protectors have enforcement jurisdiction.

(i) Nothing in this section authorizes searches within the curtilage of a dwelling or of the living quarters of a vessel in contravention of constitutional prohibitions against unreasonable searches and seizures. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C. S., s. 1885; 1935, c. 118; 1957, c. 1423, s. 2; 1965, c. 957, s. 2.)

§ 113-137. Search on arrest; seizure and confiscation of property; disposition of confiscated property.—(a) Every inspector or protector who arrests a person for an offense as to which he has enforcement jurisdiction is authorized to search the person arrested and the surrounding area for weapons and for fruits, instrumentalities, and evidence of any crime for which the person arrested is or might have been arrested.

(b) Every inspector or protector who issues a citation instead of arresting a person, in cases in which the inspector or protector is authorized to arrest, may seize all lawfully discovered evidence, fruits, and instrumentalities of any crime as to which he has arrest jurisdiction and probable cause.

(c) Every inspector or protector who in the lawful pursuit of his duties has probable cause for believing he has discovered a violation of the law over which he has jurisdiction may seize in connection therewith any fish, wildlife, weapons, equipment, vessels, or other evidence, fruits, or instrumentalities of the crime, notwithstanding the absence of any person in the immediate area subject to arrest or the failure or inability of the inspector or protector to capture or otherwise take custody of the person guilty of the violation in question. Where the owner of such property satisfies the Commissioner or the Executive Director, as the case may be, of his ownership and that he had no knowledge or culpability in regard to the offense involving the use of his property, such property must be returned to the owner. If after due diligence on the part of employees of the Department or the Commission, as the case may be, the identity or whereabouts of the violator or

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of the owner of the property seized cannot be determined, such property may be sold by the Department or the Commission in accordance with the provisions of this section.

(d) The Board and the Commission may provide by regulation for summary disposition of live or perishable fish seized by an inspector or protector pursuant to subsection (b) or (c) or pursuant to a search authorized under subsection (a). If the property seized consists of live fish which may again be placed to the benefit of the public on public grounds or in public waters, the inspector or protector may require the person in possession of the seized live property to transport it such distance as may be necessary to effect placement on appropriate grounds or waters. In the event of refusal by the person in question to transport the property, the inspector or protector must take appropriate steps to effect such transportation. The steps may include seizure of any conveyance or vessel of the person refusing to transport the property. Where a conveyance or vessel is seized, it is to be safeguarded by the inspector or protector seizing it pending trial and it becomes subject to the orders of the court. Such transportation costs as may be borne by the Department or by the Commission, as the case may be, may be collected by the agency from the proceeds of the sale of any other property of the defendant seized and sold in accordance with the provisions of this section.

Except as provided in subsection (g), where the seizure consists of edible fish which is not alive, may not live, or may not otherwise benefit conservation objectives if again placed on public grounds or in public waters, the inspector or protector must dispose of the property by turning it over to one or more appropriate public or charitable or nonprofit agencies or institutions, in accordance with the directions of his administrative superiors.

(e) Except as otherwise specifically provided in this section, all property seized must be safeguarded pending trial by the inspector or protector initiating the prosecution. Upon a conviction the property seized in connection with the offense in question is subject to the disposition ordered by the court. Upon an acquittal, property seized must be returned to the defendant or established owner, except:

- (1) Where the property was summarily disposed of in accordance with subsection (d);
- (2) Where possession of the property by the person to whom it otherwise would be returned would constitute a crime; and
- (3) Where the property seized has been sold in accordance with subsection (g). In this event the net proceeds of the sale must be returned to the defendant or established owner, as the case may be.

Where property seized summarily under subsection (d) is not available for return, an acquitted defendant or established owner is entitled to no compensation where there was probable cause for the action taken.

In safeguarding property seized pending trial, an inspector or protector is authorized in his discretion, subject to orders of his administrative superiors, to make his own provisions for storage or safekeeping or to deposit the property with the sheriff of the county in which the trial is to be held for custody pending trial. In the event the mode of safekeeping reasonably selected by the inspector or protector entails a storage or handling charge, such charge is to be paid as follows:

- (4) By the defendant if he is convicted but the court nevertheless orders the return of the property to the defendant;
- (5) From the proceeds of the sale of the property if the property is sold under court order or in accordance with the provisions of this section; or
- (6) By the Department or by the Commission, as the case may be, if no other provision for payment exists.

(f) Subject to orders of his administrative superiors, an inspector or protector in his discretion may leave property which he is authorized to seize in the posses-

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sion of the defendant with the understanding that such property will be subject to the orders of the court upon disposition of the case. Willful failure or inexcusable neglect of the defendant to keep such property subject to the orders of the court is a misdemeanor punishable in the discretion of the court. In exercising his discretion, the inspector or protector should not permit property to be retained by the defendant if there is any substantial risk of its being used by the defendant in further unlawful activity.

(g) Where a prosecution involving seized saleable fish is pending and such fish are perishable or seasonal, the inspector or protector may apply to the court in which the trial is pending for an order permitting sale prior to trial. As used in this subsection, seasonal fish are those which command a higher price at one season than at another so that economic loss may occur if there is a delay in the time of sale. When ordered by the court, such sale prior to trial must be conducted in accordance with the order of the court or in accordance with the provisions of this section. The net proceeds of such sale are to be deposited with the court and are subject to the same disposition as would have been applicable to other types of property seized. Where sale is not lawful or otherwise not practicable or where prosecution is not pending, disposal of the fish is in accordance with subsection (d).

(h) Pending trial, the defendant or the established owner of any nonperishable and nonconsumable property seized may apply to the court designated to try the offense for return of the property. The property must be returned pending trial if:

- (1) The court is satisfied that return of the property will not facilitate further violations of the law; and
- (2) The claimant posts a bond for return of the property at trial in an amount double the value of the property as assessed by the court.

(i) Upon conviction of any defendant for a violation of the laws or regulations administered by the Department or the Commission under the authority of this subchapter, the court in its discretion may order seizure and sale of all weapons, equipment, vessels, conveyances, fish, and other evidence, fruits, and instrumentalities of the offense in question—whether or not seized or made subject to the orders of the court pending trial. The defendant may appeal the reasonableness of any order of seizure and sale. Unless otherwise specified in the order of the court, such sales are to be held by the Department or by the Commission, as the case may be.

The Board and the Commission may by regulation provide for an orderly public sale procedure of property which it may sell under the provisions of this section. Such procedure may include turning the property to be sold over to some other agency for sale, provided that the provisions of subsection (j) are complied with and there is proper accounting for the net proceeds of the sale. In the case of property unlikely to sell for a sufficient amount to offset the costs of sale, the Board and Commission may provide for destruction of the property.

(j) Except as provided in subsection (d), in the case of property seized under the provisions of subsection (c) or in any case where it appears that a person not a defendant has an interest in any property to be sold, destroyed, or otherwise disposed of, the Board and the Commission must provide for public notice of the description of the property and the circumstances of its seizure for a sufficient period prior to the time set for sale or other disposition to allow innocent owners or lienholders to assert their claims. The validity of such claims are to be determined by the trial court in the event there is or has been a prosecution in connection with the seizure of the property. Where there has been no prosecution, the validity of such claims must be determined by the Commissioner or by the Executive Director, as the case may be. Where there has been a sale under subsection (g), the provisions of this subsection apply to the net proceeds of the sale.

(k) Except as provided in subdivision (e) (3) and subsection (j), the net pro-

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ceeds of all sales made pursuant to this section must be deposited in the school fund of the county in which the property was seized. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C. S., s. 1885; 1935, c. 118; 1953, c. 1134; 1957, c. 1423, s. 2; 1961, c. 1189, s. 4; 1965, c. 957, s. 2.)

§ 113-138. **Enforcement jurisdiction of special officers.**—The Board and the Commission by regulation may confer law enforcement powers over matters within their jurisdiction upon the employees of any local, State, or federal public agency who possess special law enforcement jurisdiction that would not otherwise extend to the subject matter of this subchapter. The Board and Commission may confer such powers or not to any particular officers or class of officers as may be convenient or desirable in the interests of conservation of marine and estuarine and wildlife resources. Such conferring of powers does not constitute the appointment of any such special enforcement officer to an additional office and no oath need be taken. (1965, c. 957, s. 2.)

§§ 113-139 to 113-150: Reserved for future codification purposes.

ARTICLE 14.

Commercial and Sports Fisheries Licenses and Taxes.

§ 113-151. **Regulations of Board; compensation of license agents.**—The Board is authorized to make reasonable rules and regulations governing the administration and enforcement of all license requirements and taxes prescribed in this article. In the event license agents are utilized for the issuance of any license, such agents may be compensated not in excess of five per cent (5%) of the license fees collected. (1965, c. 957, s. 2.)

§ 113-152. **Licensing of vessels; fees.**—(a) The following vessels are subject to the licensing requirements of this section:

- (1) All vessels engaged in commercial fishing operations in coastal fishing waters and
- (2) All North Carolina vessels engaged in commercial fishing operations without the State which result in landing and selling fish in North Carolina. North Carolina vessels are those which have their primary situs in North Carolina. Motorboats with North Carolina numbers under the provisions of chapter 75A of the General Statutes are deemed to have their primary situs in North Carolina; documented vessels which list a North Carolina port as home port are deemed to have their primary situs in North Carolina.

“Commercial fishing operations” are all operations preparatory to, during, and subsequent to the taking of fish:

- (3) With the use of commercial fishing equipment or
- (4) By any means, if a primary purpose of the taking is to sell the fish.

It is unlawful for the owner of a vessel subject to licensing requirements to permit it to engage in commercial fishing operations without having first procured the appropriate license. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations without complying with the provisions of this section and of regulations made under the authority of this article. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations that does not meet the license requirements of this article or of regulations made under the authority of the article, or without making reasonably certain that all persons on board are in compliance with the provisions of this article and regulations made under the authority of this article. It is unlawful to participate in any commercial fishing operation in connection with which there is a vessel

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subject to licensing requirements not meeting the licensing requirements under the provisions of this article or of regulations made under the authority of this article.

(b) Any license that may be required by this section is to be issued in the name of the owner of the vessel. It is unlawful for the owner to permit anyone who is not eligible to have the license issued to him in his own right to command such licensed vessel for the purpose of engaging in commercial fishing operations. It is unlawful for such an ineligible person to command a licensed vessel for such purposes. The license application for a menhaden vessel must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Commissioner within fifteen days. Upon change in ownership of any licensed vessel, the new owner must notify the Commissioner within fifteen days. The Board may provide by regulation for replacement of lost license plates upon tender of the original license receipt or upon such other evidence as the Board may deem sufficient. A fee not to exceed fifty cents (50¢) may be charged for replacement of a plate.

(c) Licenses are issued annually upon a calendar year basis for vessels of various lengths and types as follows for the fees indicated:

- (1) Vessels without motors, one dollar (\$1.00).
- (2) Vessels with motors not over eighteen feet in length, three dollars (\$3.00).
- (3) Vessels with motors over eighteen feet but not over twenty-six feet in length, fifty cents (50¢) per foot.
- (4) Vessels with motors over twenty-six feet in length, seventy-five cents (75¢) per foot.
- (5) Vessels engaged in menhaden fishing, as prescribed in subsection (d).

Length is measured from end to end over the deck excluding sheer.

(d) Vessels engaging in menhaden fishing are subject to the following license and fee requirements:

- (1) For the mother ship, one dollar and sixty cents (\$1.60) per ton, gross tonnage, customhouse measurements.
- (2) For each purse boat carrying a purse seine used in connection with a licensed mother ship, no license required.

(e) Unless otherwise indicated, all licenses in this article expire on December 31 of each year and are subject to the full license fee regardless of when issued. (1953, c. 1134; 1955, c. 888, ss. 1, 3; 1961, c. 1004; 1965, c. 957, s. 2.)

§ 113-153. Vessels fishing beyond territorial waters. — Persons aboard vessels not having their primary situs in North Carolina which are carrying a cargo of fish taken outside the waters of North Carolina may land and sell their catch in North Carolina either by complying with the licensing provisions of § 113-152 with respect to the vessel in question or by complying, if eligible, with the provisions of § 113-155. The Board may by regulation modify the licensing procedure set out in § 113-152 in order to devise an efficient and convenient procedure for licensing out-of-state vessels after landing in order to permit sale of cargo. Provided, that persons aboard vessels having a primary situs in a jurisdiction that would allow North Carolina vessels without restriction to land and sell their catch, taken outside such jurisdiction, may land and sell their catch in North Carolina without complying with this section. (1965, c. 957, s. 2.)

§ 113-154. Oyster and clam licenses.—(a) In addition to all other license requirements, every individual engaged in taking oysters or clams from the public or private grounds of North Carolina for commercial use by any means whatever must have first procured an individual oyster and clam license.

(b) It is unlawful for any individual to take oysters or clams from the public

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or private grounds of North Carolina without having ready at hand for inspection a current and valid oyster and clam license issued to him personally and bearing his correct name and address. It is unlawful for any such individual taking or possessing freshly taken oysters or clams to refuse to exhibit his license upon the request of an officer authorized to enforce the fishing laws.

(c) Oyster and clam licenses are issued annually on a calendar year basis upon payment of a fee of one dollar (\$1.00) upon proof that the license applicant is a resident of North Carolina.

(d) In the event an individual possessing an oyster and clam license changes his name or address or receives one erroneous in this respect, he must within fifteen days surrender the license for one bearing the correct name and address. An individual prosecuted for failure to possess a valid license is exonerated if he can show that the invalidity consisted solely of an incorrect name or address appearing in a license to which he was lawfully entitled and that the erroneous condition had not existed for longer than fifteen days.

(e) It is unlawful for an individual issued an oyster and clam license to transfer or offer to transfer his license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure an oyster or clam license from a source not authorized by the Department. (1903, c. 516, s. 6; Rev., s. 2386; C. S., s. 1934; 1953, c. 1134; 1955, c. 888, s. 1; 1965, c. 957, s. 2.)

§ 113-155. Licenses to land and sell fish.—(a) Except as otherwise provided in this article, it is unlawful for any person to sell fish, no matter where or how taken, to a fish dealer required to be licensed under this article unless the fish were taken lawfully and unless:

- (1) He has a current and valid license to land and sell fish issued to him personally and has received less than two hundred dollars (\$200.00) on account of the sale of fish within the last twelve months; or
- (2) The fish were taken in a commercial fishing operation meeting all licensing requirements, and he was a party to the operation; or
- (3) The fish were taken by him, whether by sport or commercial methods, through the use of a vessel currently and validly licensed under § 113-152; or
- (4) The fish were taken by him in inland fishing waters in conformity with laws and regulations administered by the Commission and are of a type permitted to be sold by the Commission; or
- (5) He is a licensed fish dealer.

(b) In the case of oysters or clams a license to land and sell is not required, but the person selling must satisfy the dealer that he took them or participated in the taking, that he then had a current and valid oyster and clam license issued to him personally, and that the oysters or clams were taken lawfully. In the event the person selling is a dealer, he must satisfy the purchasing dealer that the oysters or clams were acquired in conformity with law.

(c) Dealers purchasing fish must record such information relating to purchases as required by the Board to implement the provisions of this section.

(d) Annual licenses to land and sell are issued on a calendar year basis to individual residents and nonresidents upon payment of a fee of two dollars (\$2.00).

(e) Any individual who receives in excess of two hundred dollars (\$200.00) in cash or equivalent value within any twelve-month period on account of the sale of fish is not entitled to a license to land and sell. If not covered by any exemption from license requirements, he must comply with licensing provisions applicable to vessels (or secure compliance by the owner of any vessel that may be involved) or comply with licensing provisions applicable to dealers, as may be appropriate. The Board may implement this subsection by regulations clarifying

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which license is required in particular situations. In the event the taking of fish is done without the use of a vessel but the vessel license rather than the dealer license is the appropriate one, the Board may by regulation determine which vessel license may be applicable on the basis of amount or value of fish taken and the average size of vessels ordinarily used to take such quantity or value of fish.

(f) It is unlawful for an individual issued a license to land and sell to transfer or offer to transfer his license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure an oyster and clam license from a source not authorized by the Department. (1965, c. 957, s. 2.)

§ 113-156. **Licenses for fish dealers.**—(a) Except as otherwise provided in this article, every person who sells fish or has any connection whatever with fish that results in his enrichment is a fish dealer, provided that individual employees of fish dealers are not fish dealers merely by virtue of transacting the business of their employers.

(b) The Board may make reasonable regulations to implement this section by clarifying the status of particular classes of persons as regards fish dealerships. Persons all of whose dealings with a category of fish fall under one or more of the following headings are not fish dealers as respects that category:

- (1) Persons whose dealings in fish are primarily educational, scientific, or official. Scientific, educational, or official agencies may sell fish harvested or processed in connection with research or demonstration projects without being deemed dealers, but such sales are subject to such reasonable regulations as the Board may make governing such sales.
- (2) Individuals selling legally acquired fish other than oysters and clams to individuals other than dealers on a casual, noncommercial basis, provided that such sales do not net in excess of five hundred dollars (\$500.00) in cash or equivalent value in any twelve-month period. Any public offer to sell, or peddling of fish, is deemed commercial.
- (3) Fishermen who sell their catch exclusively to licensed dealers in accordance with § 113-155.

(c) Every fish dealer is subject to the licensing requirements of this section unless all fish handled within any particular licensing category meet one or more of the following requirements:

- (1) The fish are shipped to him by a dealer from without the State.
- (2) The fish are nongame fish taken in inland fishing waters.
- (3) The fish are of a kind the sale of which is regulated exclusively by the Commission.
- (4) The fish are purchased from a licensed dealer.

In the event the seller is a licensed fish dealer, he must satisfy any purchasing fish dealer, whether licensed or unlicensed, that the fish were acquired in conformity with law. It is unlawful for a fish dealer to purchase or sell or in any manner deal in fish except in conformity with the provisions of this section.

(d) Every fish dealer subject to the licensing provisions of this section must secure a separate license or set of licenses for each established location. Where a dealer does not have an established location for transacting the fisheries business within the State, the license application must be denied unless the applicant satisfies the Commissioner that his residence, or some other office or address, within

(1) Dealing in shellfish:

a. Shucker-packer (including sale of shell stock), twenty-five dollar license at each established location for each of the following activities transacted there, upon payment of the fee set out:

the State, is a suitable substitute for an established location and that records

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kept in connection with licensing, sale, and tax requirements will be available for inspection when necessary.

- (c) Every fish dealer subject to licensing requirements must secure an annual
lars (\$25.00).
 - b. Shell stock shipper, ten dollars (\$10.00).
- (2) Dealing in hard and soft crabs:
 - a. Crab processor (including dealing in unprocessed crabs), ten dollars (\$10.00).
 - b. Unprocessed crab dealer, five dollars (\$5.00).
- (3) Dealing in shrimp, ten dollars (\$10.00).
- (4) Dealing in finfish, ten dollars (\$10.00).
- (5) Operating menhaden processing plant, one hundred dollars (\$100.00).
- (6) Operating any other fish dehydrating or oil extracting plant, fifty dollars (\$50.00).

Any person subject to fish-dealer licensing requirements who deals in fish not included in the above categories must secure a finfish dealer license. The Board may make reasonable regulations implementing and clarifying the dealer categories of this subsection. (1903, c. 516, s. 9; Rev., s. 2395; 1915, c. 136, s. 1; C. S., s. 1935; 1953, c. 1134; 1965, c. 957, s. 2.)

§ 113-157. Taxes on seafood.—(a) Taxes are due and payable to the Department from fish dealers required to be licensed upon delivery to them of any seafood listed in this section taken within the State, whether from public or private grounds, unless accompanied by evidence that the tax levied by this section has already been assessed. The Board may make reasonable regulations governing the administration, assessment, and collection of the seafood tax.

(b) In the event the fish dealer required to be licensed is also the fisherman taking the taxable seafood, the Board may make reasonable regulations fixing the point at which the seafood tax becomes due and payable.

(c) In the event that the Board authorizes a self-assessment method of collecting all or any part of the seafood tax, upon forms furnished to dealers by the Department, all taxes assessed are payable at all times on demand of any inspector or other authorized agent of the Department. If the Commissioner becomes satisfied that any dealer granted the privilege of self-assessment has substantially obstructed the efficient and equitable administration of the provisions of this article, either willfully or through inexcusable neglect, the Commissioner may order the dealer's self-assessment privilege terminated. Termination may not exceed ten days upon the first occasion. Upon the second occasion, the period of termination may not exceed thirty days. Upon the third or any subsequent occasion, the Commissioner may terminate the self-assessment privilege indefinitely subject to reinstatement in his discretion. If the Commissioner determines that termination of the privilege is likely to aggravate rather than reduce obstruction, he should employ other methods designed to secure compliance with laws, regulations, and reasonable requests of agents of the Department designed to produce equitable and efficient administration and enforcement of the provisions of this article.

(d) The following taxes are applicable to the seafood named below:

- (1) Oysters, eight cents (8¢) per bushel.
- (2) Clams, six cents (6¢) per bushel.
- (3) Scallops, five cents (5¢) per gallon.
- (4) Soft crabs, two cents (2¢) per dozen.
- (5) Hard crabs, ten cents (10¢) per one hundred pounds.
- (6) Shrimp, green, heads off, fifteen cents (15¢) per one hundred pounds.

An additional tax of fifty cents (50¢) per bushel is levied upon all oysters

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taken in North Carolina which are shipped in the shell to any place outside the State.

(e) In the event the Board authorizes a self-assessment method of collecting all or any part of the seafood tax, all records and accounts required to be kept by the Department must be kept in a safe place and reasonable efforts must be made to preserve them from loss or destruction. If it becomes impossible to determine the amount of tax assessed for any period owing to loss or destruction of records or accounts, failure to make proper entries, or other fault of the dealer, an agent of the Department must reconstruct the approximate tax payable based upon previous sales in similar periods, the general condition of the market for the time in question, and other relevant information. The tax to be assessed for such period includes a one hundred per cent (100%) penalty and is double the reconstructed figure. It is unlawful for any fish dealer to fail to remit upon demand of an authorized agent of the Department all taxes and penalties due. If any dispute arises as to the accuracy of the reconstructed figure, the dealer must bear the burden of showing it to be inaccurate. The dealer may appeal the reconstructed amount to the Commissioner and, if dissatisfied, to the Board. The decision of the Board is final. In the event of appeal, the dealer must pay the reconstructed tax plus penalty under protest. (1947, c. 1000, s. 2; 1953, c. 175, s. 2; c. 1134; c. 1153, ss. 1, 2; 1965, c. 957, s. 2.)

§ 113-158. Transplanting or holding seafood; when seafood taxes due; permits to transplant oysters or clams. — (a) Where a fish dealer acquires taxable live seafood and transfers it to private beds, holding ponds, fish boxes or traps, or otherwise in the waters of this State with the purpose of harvesting the seafood at a subsequent time, the tax becomes due and payable at the time of harvest. The Board may regulate such operations and require that such notices be given inspectors and that such records be kept as will minimize the risk of illicit traffic in taxable seafood under the cover of these operations. If as to any particular type of operation, regulation and inspection is made more efficient and equitable through the assessment of the tax at an earlier stage than that prescribed above, the Board may by regulation declare the tax due and payable at the earlier stage.

(b) The Board may require that special permits be secured in advance by all persons, whether dealers or otherwise, prior to transplanting oysters or clams. (1965, c. 957, s. 2.)

§ 113-159. Contribution of oyster shells.—All persons required to secure shellfish dealers' licenses must set aside and accumulate for the Department fifty per cent (50%) of the oyster shells which come into their possession, or a lesser fractional amount of the total as set by the Board. Such fractional amount must not be more than half of the shells acquired within any calendar year, without regard to whether the oysters were taken from public or private beds or within the State or without. The Commissioner should collect the shells accumulated at least annually and in his discretion may do so more frequently, but he may decline to accept the contribution of shells from any dealer in the event he finds collection to be uneconomical or unfeasible. (1947, c. 1000, s. 2; 1953, c. 175, s. 2; c. 1153, ss. 1, 2; 1965, c. 957, s. 2.)

§ 113-160. Exportation and importation of fish and equipment.—The Board may make reasonable regulations governing the importation and exportation of fish and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of North Carolina. Such regulations may regulate, license, prohibit, or restrict importation into the State and exportation from the State of any and all species of fish which

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are native to coastal fishing waters or which may thrive if introduced into such waters. (1947, c. 1000, s. 2; 1953, c. 175, s. 2; c. 1153, ss. 1, 2; 1965, c. 957, s. 2.)

§ 113-161. Reciprocal agreements.—Upon recommendation of the Commissioner, the Director may make reciprocal agreements with other jurisdictions to authorize persons licensed in such other jurisdictions to exercise licensed privileges within this State upon such terms and conditions that may be agreed on as mutually beneficial, provided that such jurisdictions accord privileges of similar nature or value to holders of North Carolina licenses. (1965, c. 957, s. 2.)

§ 113-162. Fraud or deception as to licenses, taxes or records.—It is unlawful to falsify, or to practice any fraud or deception designed to evade the provisions of this article or of regulations made under the authority of this article in connection with:

- (1) Any licenses authorized in this article;
- (2) Any tax receipts or other evidence that the tax has been assessed on seafood or that the seafood is not subject to tax; or
- (3) Any records required to be kept under the provisions of this article or of regulations made under the authority of this article. (1965, c. 957, s. 2.)

§ 113-163. Record-keeping requirements. — (a) The Department may require all licensees under this article to keep and to exhibit upon the request of an authorized agent of the Department such records and accounts as may be necessary to the equitable and efficient administration and enforcement of this article. In addition, licensees may be required to keep additional information of a statistical nature or relating to location of catch as may be needed to determine conservation policy. Records and accounts required to be kept must be preserved for inspection for not less than three years.

(b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse to keep such records and accounts as may be reasonably required. The Department may distribute forms to licensees to aid in securing compliance with its requirements, or it may inform licensees of requirements in other effective ways such as distributing memoranda and sending agents of the Department to consult with licensees who have been remiss. Detailed forms or descriptions of records, accounts, collection and inspection procedures, and the like which reasonably implement the objectives of this article need not be embodied in regulations of the Board in order to be validly required. (1953, c. 1134; 1961, c. 1189, s. 3; 1965, c. 957, s. 2.)

§ 113-164. Regulations as to possession, transportation and disposition of seafood. — The Board may make reasonable regulations governing possession, transportation, and disposition of the seafood listed in § 113-157 (d) by all persons, including those not subject to fish dealer licensing and tax requirements, in order that inspectors may adequately distinguish the taxable seafood from that not subject to tax and equitably and efficiently enforce the provisions of this article. Such regulations may include requirements as to giving notice, filing declarations, securing permits, marking packages, and the like. (1965, c. 957, s. 2.)

§ 113-165. Violations with respect to taxable seafood and coastal fisheries products.—It is unlawful to take, possess, transport, process, sell, buy, offer or attempt to buy, or in any way deal in either seafood made taxable in this article or coastal fisheries products without conforming with the provisions of this article or of regulations made under the authority of this article. (1961, c. 1189, s. 2; 1965, c. 957, s. 2.)

§ 113-166. Suspension, revocation and reissuance of licenses.—(a) Upon receipt of reliable notice that a person licensed under this article has had

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imposed against him a conviction of a criminal offense within the jurisdiction of the Department under the provisions of this subchapter or of regulations of the Board adopted under the authority of this subchapter, the Commissioner must suspend or revoke all licenses held by such person in accordance with the terms of this section. Reliable notice includes information furnished the Commissioner in prosecution or other reports from inspectors. As used in this section, a conviction includes a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached, or any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses his guilt. In particular, procedures whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or prayer for judgment continued are deemed convictions. The Commissioner may act to suspend or revoke licenses upon the basis of any conviction in which:

- (1) No notice of appeal has been given; or
- (2) The time for appeal has expired without an appeal having been perfected; or
- (3) The conviction is sustained on appeal. Where there is a new trial, finality of any subsequent conviction will be determined in the manner set out above.

(b) The Commissioner must initiate an administrative procedure designed to give him systematic notice of all convictions of criminal offenses by licensees covered by subsection (a) above and keep a file of all such convictions reported to him. Upon receipt of notice of such conviction, the Commissioner must determine whether it is a first, a second, a third, or a fourth or subsequent conviction of some offense covered by subsection (a). In the case of second convictions, the Commissioner must suspend all licenses issued to the licensee for a period of ten days. In the case of third convictions, the Commissioner must suspend all licenses issued to the licensee for a period of thirty days. In the case of fourth or subsequent convictions, the Commissioner must revoke all licenses issued to the licensee. Where several convictions result from a single transaction or occurrence, they are to be treated as a single conviction so far as suspension or revocation of the licenses of any licensee is concerned. Anyone convicted of taking or of knowingly possessing, transporting, buying, selling, or offering to buy or sell oysters or clams from areas closed because of suspected pollution will be deemed by the Commissioner to have been convicted of two separate offenses on different occasions for license suspension or revocation purposes.

(c) Where a license has been suspended or revoked, the former licensee is not eligible to apply for reissuance of license or for any additional license authorized in this article during the suspension or revocation period. Licenses must be returned to the licensee by the Commissioner or his agents at the end of a period of suspension. Where there has been a revocation, application for reissuance of license or for an additional license may not be made until six months following the date of revocation. In such case of revocation, the eligible former licensee must satisfy the Commissioner that he will strive in the future to conduct the operations for which the license is sought in accord with all applicable laws and regulations. Upon the application of an eligible former licensee after revocation, the Commissioner in his discretion may issue one license sought but not another, as he deems it necessary to prevent the hazard of recurring violations of the law.

(d) Upon receiving reliable information of a licensee's conviction of a second or subsequent criminal offense covered by subsection (a), the Commissioner must promptly cause the licensee to be personally served with written notice of suspension or revocation, as the case may be. The written notice may be served upon

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any responsible individual affiliated with the corporation, partnership, or association where the licensee is not an individual. The notice of suspension or revocation may be served by an inspector or other agent of the Department, must state the ground upon which it is based, and takes effect immediately upon personal service. The agent of the Commissioner making such service must then or subsequently, as may be feasible under the circumstances, collect all license certificates and plates and other forms or records relating to the license as directed by the Commissioner. It is unlawful for any licensee willfully to evade the personal service prescribed in this subsection.

(e) Licensees served with notices of suspension or revocation may appeal in writing to the Commissioner on the question of whether or not they were in fact subjected to final convictions in the proceedings forming a basis for their license suspension or revocation. The license remains revoked or suspended, after personal service, pending appeal to the Commissioner. The Commissioner must hear the evidence of the licensee as promptly as may be feasible and either cancel or continue in effect the suspension or revocation order. The decision of the Commissioner as to imposition of suspension or revocation is the final administrative determination.

(f) In the event the Commissioner refuses to reissue the license of or issue an additional license to an eligible former licensee after revocation, the former licensee may appeal the decision of the Commissioner to the Director and, if dissatisfied, to the Board. In the event the decision not to issue the license is upheld, the former licensee must wait an additional six months before again applying to the Commissioner for issuance or reissuance of any license.

(g) The Board may by regulation provide for disclosure of the identity of any individual or individuals in responsible positions of control respecting operations of any licensee that is not an individual. For the purposes of this section, individuals in such responsible positions of control are deemed to be individual licensees and subject to suspension and revocation requirements in regard to any applications for license they may make—either as individual or as persons in responsible positions of control in any corporation, partnership, or association. In the case of individual licensees, the individual applying for a license or licensed under this article must be the real party in interest.

(h) In determining whether a conviction is a second or subsequent offense under the provisions of this section, the Commissioner may not consider convictions for:

- (1) Offenses which occurred prior to the effective date of this article; or
- (2) Offenses which occurred more than three years prior to the time of the latest offense the conviction for which is in issue as a subsequent conviction. (1953, c. 1134; 1961, c. 1189, ss. 4, 9; 1965, c. 957, s. 2.)

Cross Reference. — As to effective date of this article, see Editor's note to § 113-127.

§§ 113-167 to 113-180: Reserved for future codification purposes.

ARTICLE 15.

Regulation of Coastal Fisheries.

§ 113-181. **Duties and powers of Department.**—(a) It is the duty of the Department to administer and enforce the provisions of this subchapter pertaining to the conservation of marine and estuarine resources. In execution of this duty, the Department may collect such statistics, market information, and research data as is necessary or useful to the promotion of sports and commercial fisheries in North Carolina and the conservation of marine and estuarine re-

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sources generally; conduct or contract for research programs or research and development programs applicable to resources generally and to methods of cultivating, harvesting, marketing, or processing fish as may be beneficial in achieving the objectives of this subchapter; enter into reciprocal agreements with other jurisdictions with regard to the conservation of marine and estuarine resources; and regulate placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational and recreational safety as well as from a conservation standpoint.

(b) The Department is directed to make every reasonable effort to carry out the duties imposed in this subchapter. The Board may make regulations as necessary to implement the work of the Department in carrying out such duties. (1915, c. 84, s. 5; 1917, c. 290, s. 10; C. S., s. 1883; 1953, c. 1086; 1965, c. 957, s. 2.)

§ 113-182. Regulation of fishing and fisheries.—(a) The Board is authorized to authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:

- (1) Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish;
- (2) Seasons for taking fish;
- (3) Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(b) The Board is authorized to authorize, license, regulate, prohibit, prescribe, or restrict:

- (1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department; and
- (2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251; 1961, c. 1189, s. 1; 1963, c. 1097, s. 1; 1965, c. 957, s. 2.)

§ 113-183. Unlawful possession, transportation and sale of fish.—

(a) It is unlawful to possess, transport, offer to transport, sell, offer to sell, receive, buy, or attempt to buy any fish regulated by the Department with knowledge or reason to believe that such fish are illicit.

(b) Fish are illicit when taken, possessed, or dealt with unlawfully, or when there has occurred at any time with respect to such fish a substantial failure of compliance with the applicable provisions of this subchapter or of regulations made under the authority of this subchapter. (1961, c. 1189, s. 2; 1965, c. 957, s. 2.)

§ 113-184. Possession and transportation of prohibited oyster equipment.—(a) It is unlawful to carry aboard any vessel subject to licensing requirements under article 14 under way or at anchor in coastal fishing waters during the regular closed oyster season any scoops, scrapes, dredges, or winders such as are usually or can be used for taking oysters.

(b) If any vessel has recently been under way or at anchor in coastal fishing waters engaged in activity similar in manner to that in which oysters are taken with scoops, scrapes, or dredges and at a time or place in which the taking of oysters is prohibited, the presence on board of the vessel of wet oysters or scoops, scrapes, dredges, lines, or deck wet, indicating the taking of oysters, constitutes

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prima facie evidence that the vessel was engaged in taking oysters unlawfully with scoops, scrapes, or dredges at the time or place prohibited.

(c) It is unlawful to carry aboard any vessel subject to licensing requirements under article 14 under way or at anchor in coastal fishing waters any dredge weighing more than one hundred pounds. (1903, c. 516, ss. 13-15, 28; Rev., ss. 2385, 2397; C. S., s. 1926; 1963, c. 452; 1965, c. 957, s. 2.)

§ 113-185. Fishing near ocean piers; trash or scrap fishing.—(a) It is unlawful to fish in the ocean within 750 feet of an ocean pier except:

- (1) From the pier or
- (2) By means of surf casting.

This prohibition shall be effective whether or not the pier owner places in the area of his pier and at his own expense buoys located in accordance with directives of the Commissioner to indicate clearly to fishermen in vessels and on the beach the requisite distance of 750 feet from the pier.

(b) It is unlawful to engage in any fishing operations known as trash fishing or scrap fishing. "Trash fishing" or "scrap fishing" consists of intentionally taking the young of edible fish before they are of sufficient size to be of value as individual food fish:

- (1) For commercial disposition as bait; or
- (2) For sale to any dehydrating or nonfood processing plant; or
- (3) For sale or commercial disposition in any manner other than for human consumption.

The Board may by regulation authorize the disposition of the young of edible fish taken incidentally and unavoidably in connection with legitimate commercial fishing operations, provided that the quantity of such fish that may be disposed of is sufficiently limited, or the taking and disposition is otherwise so regulated, as to discourage any practice of trash or scrap fishing for its own sake. (1965, c. 957, s. 2.)

§ 113-186. Measures for fish scrap and oil. — All persons buying or selling menhaden for the purpose of manufacturing fish scrap and oil within the State must buy or sell according to the measure prescribed in this section: Twenty-two thousand cubic inches for every one thousand fish. Each day of failure to use the prescribed measure constitutes a separate offense. (1911, c. 101; C. S., s. 1963; 1965, c. 957, s. 2.)

§ 113-187. Penalties for violations of article and regulations.—(a) It is unlawful for any person to participate in any commercial fishing operation conducted in violation of any provision of this article and its implementing regulations or in any operation in connection with which any vessel is used in violation of any provision of this article and its implementing regulations.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this article and its implementing regulations is guilty of a misdemeanor punishable in the discretion of the court.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this article and its implementing regulations or in charge of any vessel used in violation of any provision of this article and its implementing regulations is guilty of a misdemeanor punishable in the discretion of the court. (1965, c. 957, s. 2.)

§ 113-188. Additional regulations authorized.—The setting out of particular offenses or requirements with regard to specific species of fish or with regard to certain types of equipment does not affect the authority of the Board to

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make similar additional regulations not in conflict with the provisions of this article under authority granted in this chapter. (1965, c. 957, s. 2.)

§§ 113-189 to 113-200: Reserved for future codification purposes.

ARTICLE 16.

Cultivation of Oysters and Clams.

§ 113-201. **Authority of Board.**—The Board is empowered to make regulations and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of oysters and clams in North Carolina both from public grounds and private beds. (1921, c. 132, s. 1; C. S., s. 1959(a); 1965, c. 957, s. 2.)

§ 113-202. **Existing and new or renewed oyster and clam leases.** — (a) Except as indicated below, all oyster and clam leases heretofore granted are subject to the provisions of this article. All oyster and clam leases renewed under the provisions of the former law are terminated upon the first day of April next following the effective date of this article, subject to the right to renewal of lease in conformity with the provisions of this article, upon the application of the lessee. All initial oyster and clam leases under the provisions of the former law more than fifteen years old but not more than twenty years old are terminated on the first of April one year next following the effective date of this article, subject to the right to renewal of lease in conformity with the provisions of this article, upon the application of the lessee. All initial oyster and clam leases under the provisions of the former law more than ten years old but not more than fifteen years old are terminated on the first day of April two years next following the effective date of this article, subject to the right to renewal of lease in conformity with the provisions of this article, upon the application of the lessee. All initial oyster and clam leases under the provisions of the former law not more than ten years old upon the effective date of this article are terminated at noon on the first day of April following the tenth anniversary of the granting of the lease and are subject to renewal in accordance with the provisions of this article. Except as otherwise provided in this article or in regulations of the Board implementing the orderly transition from the provisions of the former law to that in this article, the provisions of this article and its implementing regulations apply to all oyster and clam leases within the State. Rental amounts prescribed in this article apply to all leases granted under the provisions of previous legislation, effective the first day of April next following the effective date of this article.

(b) In order to encourage oyster and clam culture in North Carolina, the Board, upon the recommendation of the Commissioner, may lease to residents any of the public bottoms underlying coastal fishing waters which do not contain a natural oyster or clam bed, in accordance with the provisions of this article. A natural oyster or clam bed is an area of public bottom where oysters or clams are to be found growing in sufficient quantities to be valuable to the public.

(c) The area leased may not be less than one acre nor more than fifty acres, except that in the open waters of Pamlico Sound leases may not be less than five acres nor more than two hundred acres. For the purposes of this section, the open waters of Pamlico Sound are those waters more than two miles from the shore line.

(d) No person may lease more than a total of fifty acres of public bottom outside the open waters of Pamlico Sound. In no event may any person lease more than a total of two hundred acres within the State.

(e) Any person desiring to apply for a lease or renewal of a lease must make written application to the Commissioner on forms prepared by him containing such information as deemed necessary to determine the desirability of granting or not

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granting the lease requested. The application must be accompanied by a survey, made at the expense of the applicant, showing the area proposed to be leased.

The survey must conform to standards prescribed by the Commissioner concerning accuracy of survey and the amount of detail that must be shown. If on the basis of the application information and survey the Commissioner deems that granting the lease would benefit the oyster and clam culture of North Carolina, the Commissioner, in the case of initial lease applications, must order an investigation of the bottom proposed to the [be] leased. The investigation is to be made by the Commissioner or his authorized agent and by a qualified assistant appointed by the board of county commissioners of the county in which the bottom, or the greater portion of the bottom, is located to determine whether there is a natural oyster or clam bed within the bounds of the proposed lease. In the event a natural oyster or clam bed is encountered, the Commissioner in his discretion may either recommend that the lease be denied or that it be amended so as to exclude such bed. In the event the Commissioner authorizes amendment of the application, the applicant must furnish a new survey meeting requisite standards showing the area proposed to be leased under the amended application. At the time of making application for an initial lease, the applicant must pay a filing fee of twenty-five dollars (\$25.00). At the time of making application for a renewal lease, the applicant must pay a filing fee of ten dollars (\$10.00).

(f) The area of bottom applied for in the case of an initial lease or amended initial lease must be as compact as possible, taking into consideration the shape of the body of water, the consistency of the bottom, and the desirability of separating the boundaries of a leasehold by a sufficient distance from any known natural oyster or clam bed to prevent the likelihood of disputes arising between the leaseholder and members of the public taking oysters or clams from the natural bed.

(g) Upon determination by the Commissioner that the results of the investigation, if required, are satisfactory and that the application for lease or renewal of lease and the accompanying survey are in order, and that the proper filing fee has been tendered, the Commissioner must within a reasonable time notify the applicant whether he recommends approval, disapproval, or modification of the lease application. In the event the Commissioner recommends approval or a modification to which the applicant agrees, the Commissioner must publish at least two notices of intention to lease in a newspaper of general circulation in the county or counties in which the proposed leasehold lies. The first publication must precede by more than thirty days the meeting of the Board at which the granting of the lease or renewal of lease is to be made; the second publication must follow the first by seven to eleven days. The notice of intention to lease must contain a sufficient description of the area of the proposed leasehold that its boundaries may be established with reasonable ease and certainty and must also contain the date of the meeting at which the Board is slated to act upon the application for lease or renewal of lease.

(h) Protests to the granting of the proposed lease or renewal of lease may be filed with the Commissioner in writing under oath prior to the granting of the lease by the Board. Protests cannot be considered unless accompanied by a filing fee of twenty-five dollars (\$25.00). The Commissioner must evaluate the sufficiency of the grounds stated in the protest and make such investigation as he deems necessary. In the interest of making a just evaluation, he may recommend that the Board postpone consideration of the lease to a subsequent meeting. The Commissioner as a result of his evaluation may recommend denial or amendment of the lease or the granting of it in its original form, in the best interests of the oyster and clam culture of North Carolina, except that no lease may be granted which embraces a known or suspected natural oyster or clam bed. The lease applicant must furnish any additional or amended survey required in the event the protest results

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in a modification of the lease. In the event the protest does not prevail and the lease is granted in its original form, the twenty-five dollars (\$25.00) deposited with the protest must be forfeited to the use of the department. In the event the protest is successful in causing a denial or modification of the lease, the twenty-five dollar (\$25.00) deposit must be returned to the person protesting.

(i) The Board in its discretion may lease or decline to lease public bottoms for oyster or clam culture in accordance with its duty to conserve the marine and estuarine resources of the State. The Commissioner must present all lease applications to the Board as to which he has published a notice of intention to lease more than thirty days prior to the meeting of the Board. In the event there was a protest that did not prevail before the Commissioner as to any lease recommended by him, the Commissioner must notify the Board of such protest. Persons whose lease applications are not recommended or are recommended in amended form by the Commissioner may appeal to the Board. In the event the Board sustains the appeal in whole or in part, it may order the Commissioner to take the steps necessary to comply with its decisions and effect a reprocessing of the lease application prior to the next Board meeting or such other time as it may direct.

(j) In the event of procedural delay upon an application for renewal of lease, the leaseholder having made timely application may continue in possession of the leasehold until a final decision is made by the Board either to grant, deny, or modify the renewal lease for which he applied. Renewal applications are timely if received by the Commissioner after January 1 and on or before April 1 in the year in which the lease is subject to renewal.

(k) After a lease is granted by the Board and the Director is satisfied that the survey submitted meets the Commissioner's criteria and that the filing fee and rent due in advance has been paid, the Director must execute the lease on forms approved by the Attorney General. The leaseholder must erect markers complying with regulations of the Board in order to define the bounds of the leased area.

(l) Initial leases begin upon the issuance of the lease by the Director and expire at noon on the first day of April following the tenth anniversary of the granting of the lease. Renewal leases are issued for a period of ten years effective from the time of expiration of the previous lease. The rental for initial leases is one dollar (\$1.00) per acre until noon on the first day of April following the first anniversary of the lease. Thereafter, for initial leases, and from the beginning for renewal leases, the rental is five dollars (\$5.00) per acre per year. Rental must be paid annually in advance prior to the first day of April each year. Upon initial granting of a lease, the prorata amount for the portion of the year left until the first day of April must be paid in advance at the rate of one dollar (\$1.00) per acre per year; then, on or before the first day of April next, the lessee must pay the rental for the next full year.

(m) Except as restricted by this subchapter, leaseholds granted under this section are to be treated as if they were real property and are subject to all laws relating to taxation, sale, devise, inheritance, gift, seizure and sale under execution or other legal process, and the like. Leases properly acknowledged and probated are eligible for recordation in the same manner as instruments conveying an estate in real property. Within fifteen days after transfer of beneficial ownership of all or any portion of or interest in a leasehold to another, the new owner must notify the Commissioner of such fact. Such transfer is not valid until notice is furnished the Commissioner. In the event such transferee is a nonresident, the Commissioner must initiate proceedings to terminate the lease.

(n) Upon receipt of notice by the Commissioner of any of the following occurrences, he must commence action to terminate the leasehold:

- (1) Failure to pay the annual rent in advance.
- (2) Failure to file information required by the Commissioner upon annual remittance of rental.

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- (3) Failure by new owner to report a transfer of beneficial ownership of all or any portion of or interest in the leasehold.
- (4) Failure to mark the boundaries in the leasehold and to keep them marked as required in the regulations of the Board.
- (5) Failure to utilize the leasehold on a continuing basis for the commercial production of oysters or clams.
- (6) Transfer of all or part of the beneficial ownership of a leasehold to a non-resident.
- (7) Substantial breach of compliance with the provisions of this article or of regulations of the Board governing use of the leasehold.

The Board is authorized to make regulations defining commercial production of oysters and clams, based upon the productive potential of particular areas, climatic or biological conditions at particular areas or particular times, availability of seed oysters and clams, availability for purchase by lessees of shells or other material to which oyster spat may attach, and the like. Commercial production may be defined in terms of planting effort made as well as in terms of quantities of oysters and clams harvested.

(o) After receipt of notice of any occurrence listed in subsection (n), the Commissioner must mail the leaseholder a letter by registered or certified mail, return receipt requested, informing him of his intention to terminate and of the reason for the action. In the event the leaseholder takes steps within thirty days to remedy the situation upon which the notice of intention to terminate was based and the Commissioner is satisfied that continuation of the lease is in the best interests of the oyster and clam culture of the State, the Commissioner may discontinue termination procedures. Where there is no discontinuance of termination procedures, the leaseholder may appeal to the Director, and, if dissatisfied, to the Board. Where there is no appeal, or where an appeal does not prevail, the Director must send a final letter of termination to the leaseholder by registered or certified mail, return receipt requested. The final letter of termination may not be mailed sooner than thirty days after receipt by the leaseholder of the Commissioner's notice of intention to terminate, as evidenced by the return receipt. The lease is terminated effective at midnight on the day the final notice of termination is received by the leaseholder, as evidenced by the return receipt. The final notice of termination may not be issued pending hearing of any appeal by the Director or by the Board.

(p) Upon final termination of any leasehold, the bottom in question is thrown open to the public for use in accordance with laws and regulations governing use of public grounds generally. Agents of the Commissioner are required as soon as possible after termination of lease to remove all markers denominating the area of the leasehold as a private bottom.

(q) Every year between January 1 and February 15 the Commissioner must mail to all leaseholders a notice of the annual rental due and include forms designed by him for determining the amount of shellfish or shells planted on the leasehold during the preceding calendar year, the amount of harvest gathered, and the names and addresses of those to whom the harvest was sold or delivered. Such forms may contain other pertinent questions relating to the utilization of the leasehold in the best interests of the oyster and clam culture of the State, and must be executed and returned by the leaseholder with the payment of his rental. Any leaseholder or his agent executing such forms for him who knowingly makes a false statement on such forms is guilty of a misdemeanor punishable in the discretion of the court.

(r) All leases and renewal leases granted before or after the effective date of this article are granted or made subject to reasonable amendment of governing statutes, regulations of the Board, and requirements imposed by the Commissioner or his agents in regulating the use of the leasehold or in processing applications or rentals. This includes such statutory increase in rentals as may be necessitated by

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changing conditions and refusal to renew lease after expiration, in the discretion of the Board. No increase in rentals, however, may be given retroactive effect. Any holder of any lease in effect upon the effective date of this article who deems himself damaged as to any vested property rights by the adoption of provisions of this article more restrictive than those in the law formerly governing his leasehold may apply to the Industrial Commission for the award of such damages as he may prove. The procedure governing such application shall follow as closely as feasible that set out in article 3 of chapter 143 of the General Statutes of North Carolina pertaining to tort claims against State departments and agencies, except that the limitation period upon any claims under this section is three rather than two years and the measure of damages is for any condemnation of leasehold effected by this section rather than for any tort. It is hereby directed that the amounts necessary to cover awards made by the Industrial Commission under the authority of this subsection be paid from funds available to the Department. (1893, c. 287, s. 1; Rev., s. 2371; 1909, c. 871, ss. 1-9; 1919, c. 333, s. 6; C. S., ss. 1902-1911; Ex. Sess. 1921, c. 46, s. 1; 1933, c. 346; 1953, cc. 842, 1139; 1963, c. 1260, ss. 1-3; 1965, c. 957, s. 2.)

Cross Reference. — As to effective date brackets in the 2nd paragraph of subsection (e) is suggested as a correction of "the," which appears in the 1965 Session Laws.

Editor's Note. — The word "be" in Laws.

§ 113-203. Transplanting of oysters and clams.—(a) It is unlawful to transplant oysters taken from public grounds to private beds except:

- (1) When lawfully taken during open season and transported directly to a private bed in accordance with regulations of the Board;
- (2) When the transplanting is done by a dealer in accordance with the provisions of § 113-158 and implementing regulations; or
- (3) When the transplanting is done in accordance with the provisions of this section and implementing regulations.

(b) It is lawful to transplant to private beds oysters or clams taken from polluted waters with a permit from the Commissioner setting out the waters from which the oysters or clams may be taken, the quantities which may be taken, the times during which the taking is permissible, and other reasonable restrictions imposed by the Commissioner to aid him in his duty of regulating such transplanting operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(c) It is lawful to transplant to private beds oysters taken from public beds managed by the State for the production of seed oysters in accordance with the implementing regulations of the Board. Persons taking such seed oysters may, in the discretion of the Board, be required to pay to the Department for oysters taken an amount to reimburse the Department in full or in part for the costs of seed-oyster management operations.

(d) The Board may implement the provisions of this section by regulations governing sale, possession, transportation, storage, handling, planting, and harvesting of oysters and clams and setting out any system of marking oysters and clams or of permits or receipts relating to them generally, from both public and private beds, as necessary to regulate the lawful transplanting of seed oysters and oysters or clams taken from or placed on public or private beds. (1921, c. 132, s. 2; C. S., s. 1959(b); 1961, c. 1189, s. 1; 1965, c. 957, s. 2.)

§ 113-204. Propagation of shellfish.—The Board is authorized to close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish. The Board is authorized to expend State funds planting such areas and to manage them in ways beneficial to the overall productivity of the shellfish industry in North Carolina. The Board

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in its discretion in accordance with desirable conservation objectives may make shellfish produced by it available to commercial fishermen generally, to those in possession of private shellfish beds, or to selected individuals cooperating with the Board in demonstration projects concerned with the cultivation, harvesting, or processing of shellfish. (1921, c. 132, s. 1; C. S., s. 1959(a); 1961, c. 1189, s. 1; 1965, c. 957, s. 2.)

§ 113-205. Registration of grants in navigable waters; exercise of private fishery rights.—(a) Every person claiming title to any part of the bed lying under navigable waters of North Carolina or any right of fishery in navigable waters superior to that of the general public must register the grant, charter, or other authorization under which he claims with the Commissioner. Such registration must be accompanied by a survey of the claimed area, meeting criteria established by the Commissioner for surveys of oyster and clam leases. All rights and titles not registered in accordance with this section on or before January 1, 1970, are hereby declared null and void. The Commissioner must give notice of this section at least once each calendar year for three years by publication in a newspaper or newspapers of general circulation throughout all coastal counties of the State.

(b) The Board may make reasonable regulations governing utilization of private fisheries and may require grantees or others with private rights to mark their fishery areas or private beds in navigable waters as a precondition to the right of excluding the public from exercising the private rights claimed to be secured to them. Nothing in this section is to be deemed to confer upon any grantee or other person with private rights the power to impede navigation upon or hinder any other appropriate use of the surface of navigable waters of North Carolina. (1965, c. 957, s. 2.)

§ 113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.—(a) The Commissioner must commence to prepare as expeditiously as possible charts of the waters of North Carolina containing the locations of all oyster and clam leaseholds made by the Department under the provisions of this article and of all existing leaseholds as they are renewed under the provisions of this article, the locations of all claims of grant of title to portions of the bed under navigable waters registered with him, and the locations of all areas in navigable waters to which a right of private fishery is claimed and registered with him. Charting or registering any claim by the Commissioner in no way implies recognition by the State of the validity of the claim.

(b) In the event of any overlapping of areas leased by the Department, the Commissioner shall recommend modification of the areas leased as he deems equitable to all parties. Appeal from the recommendation of the Commissioner lies for either party in the same manner as for a lease applicant as to which there is a recommendation of denial or modification of lease. If there is no appeal, or upon settlement of the issue upon appeal, the modified leases must be approved by the Board and reissued by the Director in the same manner as initial or renewal leases. Leaseholders must furnish the Commissioner surveys of the modified leasehold areas, meeting the requisite criteria for surveys established by the Commissioner.

(c) In the event of any overlapping of areas leased by the Department and of areas in which title or conflicting private right of fishery is claimed and registered under the provisions of this article, the Commissioner must give preference to the leaseholder engaged in the production of oysters or clams in commercial quantities who received the lease with no notice of the existence of any claimed grant or right of fishery. To this end, the Commissioner shall cause a modifica-

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tion of the claim registered with him and its accompanying survey to exclude the leasehold area. Such modification effected by the Commissioner has the effect of voiding the grant of title or right of fishing to the extent indicated.

(d) In the interest of conservation of the marine and estuarine resources of North Carolina, the Board may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Commissioner. In such proceeding, the burden of showing title or right of fishery, by the preponderance of the evidence, shall be upon the claiming title or right holder. In the event the claiming title or right holder prevails, the court shall fix the monetary worth of the claim. The Board may elect to condemn the claim upon payment of the established owners or right holders their prorata shares of the amount so fixed. The Board may make such payments from such funds as may be available to it. An appeal lies to the Supreme Court by either party both as to the validity of the claim and as to the fairness of the amount fixed. The Board in such actions may be represented by the Attorney General. In determining the availability of funds to the Board to underwrite the costs of litigation or make condemnation payments, the use which the Board proposes to make of the area in question may be considered; such payments are to be deemed necessary expenses in the course of operations attending such use or of developing or attempting to develop the area in the proposed manner.

(e) To the extent that any application of the provisions of § 113-205 and this section is deemed to constitute a taking of private property, any claimant may apply to the Industrial Commission for the award of such damages as he may prove. The procedure governing such application shall follow as closely as feasible that set out in article 3 of chapter 143 of the General Statutes of North Carolina pertaining to tort claims against State departments and agencies, except that the limitation period upon any claims brought under the authority of this subsection is three rather than two years and the measure of damages is for any condemnation effected rather than for any tort. Where the claiming party asserts damage from the voiding of a grant or right under § 113-205 (a) and further asserts his minority or other disability subsequent to January 1, 1970, the claimant is granted a period of three years after attaining majority or after removal of the disability in which to prosecute the claim before the Industrial Commission. No claims whatever may be entertained by the Industrial Commission, however, after January 1, 1990. It is hereby directed that the amounts necessary to cover awards made by the Industrial Commission under the authority of this subsection be paid from funds available to the Department. (1965, c. 957, s. 2.)

§§ 113-207 to 113-220: Reserved for future codification purposes.

ARTICLE 17.

Administrative Provisions; Regulatory Authority of Board and Department.

§ 113-221. **Filing, codification and publication of regulations; effective date of regulations; proclamations suspending or implementing regulations; presumption of publication; judicial notice of codifications; Director's certificates as evidence.** — (a) All regulations of the Board promulgated under the authority of this subchapter must be filed with the Secretary of State in accordance with §§ 143-195 to 143-197. In addition, all such regulations of the Board the violation of which constitutes a crime must be filed with the clerk of superior court of each county containing coastal fishing waters within its borders.

(b) The Commissioner must periodically codify the regulations of the Board implementing this subchapter which are subject to annual or seasonal change;

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other regulations or sets of regulations need be recodified only as supplies are exhausted or substantial changes are made. The Commissioner must cause to be distributed to each licensee upon purchasing his license each year the appropriate set or sets of such codified regulations, plus any supplement needed to make them current, pertaining to the activities to be engaged in by the licensee.

(c) As soon as feasible after any meeting of the Board amending or adding regulations, the Commissioner must cause to be issued to all licensees who may be affected a newsletter containing the text of such amendments or added regulations. The newsletter need not be issued if a codification containing the amended or added regulations is scheduled for distribution within a reasonable period following the meeting of the Board.

(d) Unless an effective date is stated by the Board, its regulations take effect immediately upon passage. Any regulation change resulting in further restrictions upon licensees or the public, however, should in the ordinary case be given a future effective date sufficiently advanced to allow for compliance with the publication procedures of this section. Where circumstances require that such restrictive regulation be put into effect immediately, the Board should take steps to insure that actual public notice is given—in a fashion similar to that set out in subsection (e). Unless there are overriding policy considerations involved, any regulation of the Board which will in the judgment of the Board result in severe curtailment of the usefulness or value of equipment in which fishermen have any substantial investment should be given such a future effective date as to minimize undue potential economic loss to fishermen. Whether or not any provision may cause potential economic loss and whether or not a future effective date should be set is a matter within the complete discretion of the Board. The Board need not set any future effective date more than two years in advance of the passage of any regulation.

(e) The Board may delegate to the Director the authority by proclamation to suspend or implement, in whole or in part, particular regulations of the Board which may be affected by variable conditions. Such proclamations are to be issued by the Director upon the recommendation of the Commissioner. All proclamations must state the hour and date upon which they become effective and must be issued at least forty-eight hours in advance of the effective date and time. The Director must keep a permanent file of the texts of proclamations issued by him, and furnish upon request certified copies of any proclamation for use in evidence in any civil or criminal proceeding in which the text of a proclamation may be in issue. Proclamations need not be filed with the Secretary of State or with any clerk of court.

The Department must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. Such effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Department, and such other measures designed to reach the persons who may be affected.

(f) All persons who may be affected by them are under a duty to keep themselves informed of current regulations of the Board and proclamations of the Director. It is no defense in any criminal prosecution for the defendant to show that he in fact received no notice of a particular regulation or proclamation. In any prosecution for violation of the provisions of any regulation or proclamation, or in which proof of matter contained in a regulation or proclamation is involved, the Department is deemed to have complied with publication procedures and the burden is on the defendant to show by the greater weight of the evidence substantial failure of compliance by the Department with the publication procedures of this section.

(g) Every court must take judicial notice of any codification of regulations is-

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sued by the Commissioner within two years preceding the date of the offense charged or transaction in issue. In the absence of any indication to the contrary, such codifications are to be deemed accurate and current statements of the text of the regulations in question and it is incumbent upon any person asserting that a relevant portion of the codified text is inaccurate, or has been amended or deleted, to satisfy the court as to the text of the regulations which is in fact properly applicable.

(h) Certificates of the Director as to the text of a regulation or proclamation or as to any other official matter concerning the Department must be received in court as prima facie evidence of the truth of the statement in the certificate. Certificates bearing the signature of the Director upon paper containing the letterhead of the Department are, in the absence of evidence to the contrary, to be accepted as genuine without any need for formal proof of the signature of the Director. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1134, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2.)

§ 113-222. Arrest, service of process and witness fees of inspectors.—All arrest fees and other fees that may be charged in any bill of costs for service of process by inspectors must be paid to the county in which the trial is held. No witness fee may be taxed in any bill of costs by virtue of the appearance of an inspector as a witness in a criminal case within his enforcement jurisdiction. Acceptance by any inspector of any arrest fee, witness fee, or any other fee to which he is not entitled is a misdemeanor punishable in the discretion of the court. (1965, c. 957, s. 2.)

§ 113-223. Reciprocal agreements by Board generally.—Subject to the specific provisions of §§ 113-153 and 113-161 relating to reciprocal provisions as to landing and selling catch and as to licenses, the Board is empowered to make reciprocal agreements with other jurisdictions respecting any of the matters governed in this subchapter. Pursuant to such agreements the Board may modify provisions of this subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of marine and estuarine resources. (1915, c. 84, s. 5; 1917, c. 290, s. 10; C. S., s. 1883; 1953, c. 1086; 1965, c. 957, s. 2.)

§ 113-224. Cooperative agreements by Board.—The Board is empowered to enter into cooperative agreements with public and private agencies and individuals respecting the matters governed in this subchapter. Pursuant to such agreements the Board may expend funds, assign employees to additional duties within or without the State, assume additional responsibilities, and take other actions that may be required by virtue of such agreements, in the overall best interests of the conservation of marine and estuarine resources. (1965, c. 957, s. 2.)

§ 113-225. Inspectors not to have financial interest in fisheries.—Except as provided in this subchapter respecting operations of demonstration and research projects by employees of the Department as part of their employment, no inspector may be financially interested in any fishing industry in the State of North Carolina. (1965, c. 957, s. 2.)

§ 113-226. Administrative authority of Board; administration of funds; delegation of powers.—(a) In the overall best interests of the conservation of marine and estuarine resources, the Board may lease or purchase lands, equipment, and other property; accept gifts and grants on behalf of the State; establish boating and fishing access areas; establish fisheries, fishery processing or storage plants, planted seafood beds, fish farms, and other enterprises related to the conservation of marine and estuarine resources as research or demonstration

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projects either alone or in cooperation with some individual or agency; sell the catch or processed fish or other marine and estuarine resources resulting from research fishing operations or demonstration projects; provide matching funds for entering into projects with some other governmental agency or with some scientific, educational, or charitable foundation or institution; condemn lands in accordance with the provisions of chapter 40 of the General Statutes and other governing provisions of law; and sell, lease, or give away property acquired by it. Provided, that any private person selected to receive gifts or benefits by the Department be selected:

- (1) With regard to the overall public interest that may result, and
- (2) From a defined class upon such a rational basis open to all within the class as to prevent constitutional infirmity with respect to requirements of equal protection of the laws or prohibitions against granting exclusive privileges or emoluments.

(b) All money credited to, held by, or to be received by the Department in respect of the conservation of marine and estuarine resources must be deposited with the Department for the use of the Division. In administering such funds and recommending expenditures, the Department must give attention to the sources of the revenues received so as to encourage disbursements to be made on an equitable basis; nevertheless, except as provided in this section, separate funds may not be established and particular projects and programs deemed to be of sufficient importance in the conservation of marine and estuarine resources may receive proportional shares of Division expenditures that are greater than the proportional shares of license and other revenues produced by such projects or programs for the Department.

(c) If as a precondition of receiving funds under any cooperative program there must be a separation of license revenues received from certain classes of licensees and utilization of such revenues for limited purposes, the Department is directed to make such arrangements for separate accounting or for separate funding as may be necessary to insure the use of the revenues for the required purposes and eligibility for the cooperative funds. In such instance, if required, such revenues may be retained by the Department until expended upon the limited purposes in question. This subsection applies whether the cooperative program is with a public or private agency and whether the Department acts alone on behalf of the State or in conjunction with the Commission or some other State agency.

(d) The Board may, within the terms of policies set by regulation and applicable statutes in this subchapter, delegate to the Director or the Commissioner, in its discretion, all administrative powers granted to it. (1965, c. 957, s. 2.)

§ 113-227. Appointment of Commissioner.—The Commissioner is to be appointed by the Director in accordance with § 113-12. (1965, c. 957, s. 2.)

§ 113-228. Adoption of federal regulations.—To the extent that the Department is granted authority in this subchapter over subject matter as to which there is concurrent federal jurisdiction, the Board in its discretion may by reference in its regulations adopt relevant provisions of federal laws and regulations as State regulations. To prevent confusion or conflict of jurisdiction in enforcement, the Board may provide for automatic incorporation by reference into its regulations of future changes within any particular set of federal laws or regulations relating to some subject clearly within the jurisdiction of the Department. (1965, c. 957, s. 2.)

§§ 113-229 to 113-240: Reserved for future codification purposes.

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ARTICLE 18.

Commercial and Sports Fisheries Advisory Board.

§ 113-241. **Creation; function, purpose and duties.** — There is hereby created the Commercial and Sports Fisheries Advisory Board. The function, purpose, and duty of the Advisory Board is to study all matters and activities in connection with the conservation of marine and estuarine resources and make recommendations to the Commissioner respecting ways to improve the conservation of such resources.

The Advisory Board has the duty of acting as a liaison group between sports and commercial fishermen, and others interested in the beneficial utilization of the marine and estuarine resources, and the Commissioner. The Advisory Board is to consider all matters which may be referred to it for study by the Board, the Commercial and Sports Fisheries Committee, the Commissioner, or the General Assembly and it must render a report in writing giving conclusions on each matter so referred. It may originate its own studies on various matters within the scope of its interests and report on such matters to the public or to the agency or official appropriately concerned. The Advisory Board, through its chairman and other members, should keep in close communication with the Commissioner and with members of the Commercial and Sports Fisheries Committee and bring to their attention all such matters as may be brought to the attention of the Advisory Board which do not require specific study but which may require decisions by them and by the Board. Aside from making recommendations to the Commissioner and other officials and agencies as to matters referred to it, the Advisory Board should make recommendations on all matters which are deemed relevant which may come to the attention of the various members of the Advisory Board through their associations with members of the public and various groups interested in the conservation of marine and estuarine resources. (1965, c. 957, s. 2.)

§ 113-242. **Appointment of members; interests represented.** — The Governor is authorized to appoint the Advisory Board to be composed of eleven members as follows:

- (1) Three sports fishermen;
- (2) Three commercial fishermen;
- (3) Two professional scientists with backgrounds relevant to the conservation of marine and estuarine resources; and
- (4) Three persons who are, at the time of their appointments, members of the General Assembly. (1965, c. 957, s. 2.)

§ 113-243. **Appointment of chairman; terms of members.**—The Governor must delegate one of the members of the Advisory Board as chairman. The member so designated serves as chairman at the pleasure of the Governor. Members of the Advisory Board serve at the pleasure of the Governor. (1965, c. 957, s. 2.)

§ 113-244. **Organization and meetings.**—At its first meeting after the appointment of a new chairman, or after the appointment of more than three new members since the last organizational election, the Advisory Board must organize and elect a vice-chairman and a secretary. In any event an organizational election must be held once every four years. A quorum for such organizational election meetings consists of seven members; the quorum for other meetings consists of six members.

Regular meetings of the Advisory Board may be held upon such a schedule as the Advisory Board may adopt. It may meet with the Commercial and Sports Fisheries Committee at the regular quarterly meetings of the Board, provided

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that the Advisory Board must hold at least one regular meeting per year prior to the meeting of the Board at some coastal area of the State as provided in § 113-6. Either the chairman of the Advisory Board or the Commissioner, in his discretion after consultation with interested persons, may call special meetings of the Advisory Board. The Commissioner and the chairman of the Commercial and Sports Fisheries Committee must be notified of and are entitled to attend all regular and special meetings of the Advisory Board. (1965, c. 957, s. 2.)

§ 113-245. **Compensation and expenses.**—The members of the Advisory Board are to be compensated while in attendance of meetings or engaged in the business of the Advisory Board by payment of per diem, subsistence, and travel allowances fixed for members of State boards, commissions, and committees in §§ 138-5 and 138-7. (1965, c. 957, s. 2.)

§§ 113-246 to 113-250: Reserved for future codification purposes.

ARTICLE 19.

Marine Fisheries Compact and Commission.

§ 113-251. **Definition of terms.**—(a) As used in this article, the word "Commission" refers to the Atlantic States Marine Fisheries Commission and the word "commissioner" refers to a member of that Commission.

(b) The reference in Article III of the compact set out in § 113-252 to the chairman of the committee on commercial fisheries shall be deemed to refer to the chairman of the successor Commercial and Sports Fisheries Committee.

(c) The reference in Article III of the compact set out in § 113-252 to the Commissioner of Commercial Fisheries shall be deemed to refer to the Commissioner of Commercial and Sports Fisheries. (1965, c. 957, s. 2.)

§ 113-252. **Atlantic States Marine Fisheries Compact and Commission.**—The Governor of this State is hereby authorized and directed to execute a compact on behalf of the State of North Carolina with any one or more of the States of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia, and Florida and with such other states as may enter into the Compact, legally joining therein in the form substantially as follows:

ATLANTIC STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

Article I

The purpose of this Compact is to promote the better utilization of the fisheries, marine, shell and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this Compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating monopoly.

Article II

This agreement shall become operative immediately as to those states executing it whenever any two or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, North Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon waters frequented by anadromous fish,

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flowing into waters under the jurisdiction of any of the aforementioned states, may become a party hereto as hereinafter provided.

Article III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Atlantic States Marine Fisheries Commission. The Board of the North Carolina Department of Conservation and Development shall designate either the director of the Department, the chairman of the committee on commercial fisheries, or the Commissioner of Commercial Fisheries as one member of the Commission, and the Commission on Interstate Co-operation of the State shall designate a member of the North Carolina legislature as one of the members of said Commission, and the third member of said Commission, who shall be a citizen of the State having a knowledge of and interest in marine fisheries, shall be appointed by the Governor. This Commission shall be a body corporate, with the powers and duties set forth herein.

Article IV

The duty of the said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Atlantic seaboard. The Commission shall have power to recommend the co-ordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

To that end the Commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislatures of the various signatory states legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The Commission shall more than one month prior to any regular meeting of the legislature in any signatory state, present to the governor of the state its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this Compact.

The Commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable.

The Commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs, or joint stocking by some or all of the states party hereto, and when two or more of the states shall jointly stock waters the Commission shall act as the co-ordinating agency for such stocking.

Article V

The Commission shall elect from its number a chairman and a vice chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this Compact into effect, and shall fix and determine their duties, qualifications and compensation. Said Commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

Article VI

No action shall be taken by the Commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states present at any meeting. No recommendation shall be made by the Com-

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mission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The Commission shall define what shall be an interest.

Article VII

The Fish and Wildlife Service of the Department of the interior of the Government of the United States shall act as the primary research agency of the Atlantic States Marine Fisheries Commission, co-operating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the Commission.

An advisory committee to be representative of the commercial fishermen and the salt water anglers and such other interests of each state as the Commission deems advisable shall be established by the Commission as soon as practicable for the purpose of advising the Commission upon such recommendations as it may desire to make.

Article VIII

When any state other than those named specifically in Article II of this Compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with the provisions of Article II the participation of such state in the action of the Commission shall be limited to such species of anadromous fish.

Article IX

Nothing in this Compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions and restrictions to conserve its fisheries.

Article X

Continued absence of representation or of any representative on the Commission from any state party hereto shall be brought to the attention of the governor thereof.

Article XI

The states party hereto agree to make annual appropriations to the support of the Commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recently published reports of the Fish and Wildlife Service of the United States Department of the Interior, provided no state shall contribute less than two hundred dollars (\$200.00) per annum and the annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars (\$100.00).

The compacting states agree to appropriate initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the catch record of 1938. Subsequent budgets shall be recommended by a majority of the Commission and the cost thereof allocated equitably among the states in accordance with their respective interests and submitted to the compacting states.

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Schedule of Initial Annual State Contributions

Maine	\$ 700
New Hampshire	200
Massachusetts	2300
Rhode Island	300
Connecticut	400
New York	1300
New Jersey	800
Delaware	200
Maryland	700
Virginia	1300
North Carolina	600
South Carolina	200
Georgia	200
Florida	1500

Article XII

This Compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this Compact must be preceded by sending six months' notice in writing of intention to withdraw from the Compact to the other states party hereto. (1949, c. 1086, s. 1; 1965, c. 957, s. 18.)

Editor's Note. — Prior to the 1965 chapter as §§ 113-377.1 to 113-377.7. As amendment this section and §§ 113-253 to to the effective date of the act, see Editor's note to § 113-127. 113-258 were codified in article 26 of this

§ 113-253. Amendment to Compact to establish joint regulation of specific fisheries.—The Governor is authorized to execute on behalf of the State of North Carolina an amendment to the Compact set out in § 113-252 with any one or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, and Florida or such other states as may become party to that Compact for the purpose of permitting the states that ratify this amendment to establish joint regulation of specific fisheries common to those states through the Atlantic States Marine Fisheries Commission and their representatives on that body. Notice of intention to withdraw from this amendment shall be executed and transmitted by the Governor and shall be in accordance with Article XII of the Atlantic States Marine Fisheries Compact and shall be effective as to this State with those states which similarly ratify this amendment. This amendment shall take effect as to this State with respect to such other of the aforesaid states as take similar action.

AMENDMENT NO. 1 OF THE ATLANTIC STATES MARINE FISHERIES COMPACT

The states consenting to this amendment agree that any two or more of them may designate the Atlantic States Marine Fisheries Commission as a joint regulatory agency with such powers as they may jointly confer from time to time for the regulation of the fishing operations of the citizens and vessels of such designating states with respect to specific fisheries in which such states have a common interest. The representatives of such states on the Atlantic States Marine Fisheries Commission shall constitute a separate section of such Commission for the exercise of the additional powers so granted, provided that the states so acting shall appropriate additional funds for this purpose. The creation of such section as a joint regulatory agency shall not deprive the states participating therein of any of their privileges or powers or responsibilities in the Atlantic States Marine

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Fisheries Commission under the general Compact. (1949, c. 1086, s. 2; 1965, c. 957, s. 18.)

Editor's Note. — Prior to the 1965 amendment this section was codified as § 113-377.2. The amendment also substituted "§ 113-252" for "§ 113-377.1" near the be-

ginning of the section. As to the effective date of the act, see Editor's note to § 113-127.

§ 113-254. North Carolina members of Commission.—In pursuance of Article III of said Compact there shall be three members (hereinafter called commissioners) of the Atlantic States Marine Fisheries Commission (hereinafter called commission) from the State of North Carolina. The first commissioner from the State of North Carolina shall be either the Director of the Department of Conservation and Development, the chairman of the Commercial and Sports Fisheries Committee, or the Commissioner of Commercial and Sports Fisheries of the State of North Carolina ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said office and his successor as commissioner shall be his successor as either the Director of the Department of Conservation and Development, the chairman of the Commercial and Sports Fisheries Committee, or the Commissioner of Commercial and Sports Fisheries, as the case may be. The second commissioner from the State of North Carolina shall be a legislator and member of the Commission on Interstate Co-operation of the State of North Carolina, ex officio, designated by said Commission on Interstate Co-operation, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said legislative office or said office as Commissioner on Interstate Co-operation, and his successor as commissioner shall be named in like manner. The Governor (by and with the advice and consent of the Senate) shall appoint a citizen as a third commissioner who shall have a knowledge of and interest in the marine fisheries problem. The term of said Commissioner shall be three years and he shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled by appointment by the Governor (by and with the advice and consent of the Senate) for the unexpired term. The Director of the Department of Conservation and Development, the chairman of the Commercial and Sports Fisheries Committee, or the Commissioner of Commercial and Sports Fisheries appointed pursuant to Article III as ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the Commission. The terms of each of the initial three members shall begin at the date of the appointment of the appointive commissioner, provided the said Compact shall then have gone into effect in accordance with Article II of the Compact; otherwise they shall begin upon the date upon which said Compact shall become effective in accordance with said Article II.

Any commissioner may be removed from office by the Governor upon charges and after a hearing. (1949, c. 1086, s. 3; 1965, c. 957, s. 18.)

Editor's Note. — Prior to the 1965 amendment this section was codified as § 113-377.3. The amendment also substituted "Commercial and Sports Fisheries Committee" for "committee on commercial fisheries" and "Commissioner of Commer-

cial and Sports Fisheries" for "Commissioner of Commercial Fisheries" throughout the section. As to the effective date of the amendment, see Editor's note to § 113-127.

§ 113-255. Powers of Commission and commissioners. — There is hereby granted to the Commission and the commissioners thereof all the powers provided for in the said Compact and all the powers necessary or incidental to the carrying out of said Compact in every particular. All officers of the State of

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North Carolina are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said Compact in every particular; it being hereby declared to be the policy of the State of North Carolina to perform and carry out the said Compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the State government or administration of the State of North Carolina are hereby authorized and directed at convenient times and upon request of the said Commission to furnish the said Commission with information and data possessed by them or any of them and to aid said Commission by loan of personnel or other means lying within their legal rights respectively. (1949, c. 1086, s. 4; 1965, c. 957, s. 18.)

Cross Reference.—See Editor's note to § 113-127.

§ 113-256. Powers herein granted to Commission are supplemental.—Any powers herein granted to the Commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said Commission by other laws of the State of North Carolina or by the laws of the states of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia and Florida or by the Congress or the terms of said Compact. (1949, c. 1086, s. 5; 1965, c. 957, s. 18.)

Cross Reference.—See Editor's note to § 113-127.

§ 113-257. Report of Commission to Governor and legislature; recommendations for legislative action; examination of accounts and books by Auditor.—The Commission shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the legislature of the State of North Carolina on or before the tenth day of December in each year, setting forth in detail the transactions conducted by it during the twelve months preceding December 1st of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the State of North Carolina which may be necessary to carry out the intent and purposes of the Compact between the signatory states.

The Auditor of the State of North Carolina is hereby authorized and empowered from time to time to examine the accounts and books of the Commission, including its receipts, disbursements and such other items referring to its financial standing as such Auditor may deem proper and to report the results of such examination to the Governor of such State. (1949, c. 1086, s. 6; 1955, c. 236, s. 2; 1965, c. 957, s. 18.)

Editor's Note. — The 1955 amendment substituted "Auditor" for "Comptroller" in the second paragraph.

Prior to the 1965 amendment this sec-

tion was codified as § 113-377.6. As to the effective date of the amendment, see Editor's note to § 113-127.

§ 113-258. Commission subject to provisions of Executive Budget Act.—The Atlantic States Marine Fisheries Commission of the State of North Carolina shall be subject to all the terms and provisions of the Executive Budget Act, article 1 of chapter 143 of the General Statutes of North Carolina. (1949, c. 1086, s. 7; 1955, c. 236, s. 1; 1965, c. 957, s. 18.)

Editor's Note. — The 1955 amendment rewrote this section.

Prior to the 1965 amendment this sec-

tion was codified as § 113-377.7. As to the effective date of the act, see Editor's note to § 113-327.

§§ 113-259, 113-260: Reserved for future codification purposes.

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ARTICLE 20.

*Miscellaneous Regulatory Provisions Applicable Both to
Department and Commission.*

§ 113-261. Taking fish for scientific purposes; cultural and scientific operations.—(a) The Department, the Commission, and any agency of the United States with jurisdiction over fish is hereby granted the right to take fish within the State, to conduct fish cultural operations and scientific investigations in the several waters of North Carolina, and to erect fish hatcheries and fish propagating plants without regard to any licensing or permit requirements in this subchapter.

(b) The Department with respect to fish in coastal fishing waters and the Commission with respect to fish in inland fishing waters may provide for the issuance of permits, on such terms as they deem just and in the best interests of conservation, authorizing persons to take such fish through the use of drugs, poisons, explosives, electricity, or any other normally prohibited manner. Such permits need not be restricted solely to victims of depredations or to scientific or educational institutions, but should be issued only for good cause. (1915, c. 84, s. 7; C. S., s. 1886; 1965, c. 957, s. 2.)

§ 113-262. Taking by poisons, drugs, explosives or electricity prohibited; exceptions; possession of illegally killed fish as evidence.—(a) Except as otherwise provided in this article, or in regulations permitting use of electricity to take certain fish, it is a misdemeanor punishable in the discretion of the court to take any fish through the use of poisons, drugs, explosives, or electricity.

(b) The possession of any fish which bears evidence of having been killed in violation of this section constitutes prima facie evidence that the person in possession intentionally took such fish. (1883, c. 290; Code, s. 1094; Rev., s. 3417; C. S., s. 1968; 1927, c. 107; 1953, c. 1134; 1955, c. 1053, ss. 1, 3, 4; 1957, c. 1056; 1965, c. 957, s. 2.)

§ 113-263. Inspecting plans and specifications of dams.—The Department and the Commission, in addition to other agencies primarily responsible, may inspect the plans and specifications of all dams proposed to be built, in North Carolina or elsewhere within the United States, the design or proposed mode of construction of which may have an adverse effect upon fish within the State. The Department or the Commission, as the case may be, may be heard before the appropriate agency charged with approving said plans and specifications, and due consideration shall be given to said Department or Commission in the approval or disapproval of the plans and specifications of proposed dams by the agencies so charged with said duty. (1965, c. 957, s. 2.)

§ 113-264. Regulatory power over property of agency. — The Board and the Commission are granted the power by regulation to license, regulate, prohibit, or restrict the public as to use and enjoyment of, or harm to, any property of the Department and the Commission, and may charge the public reasonable fees for access to or use of such property. "Property" as the word is used in this section is intended to be broadly interpreted and includes lands, buildings, vessels, vehicles, equipment, markers, stakes, buoys, posted signs and other notices, trees and shrubs and artificial constructions in boating and fishing access areas, and all other property owned, leased, or managed by either the Department or the Commission. Wilful destruction of any property of the Department or the Commission is a misdemeanor punishable in the discretion of the court. (1965, c. 957, s. 2.)

§ 113-265. Fishing from bridges; obstructing or polluting flow of water into hatchery; throwing fish offal into waters; robbing or injuring

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nets, seines, buoys, etc.—(a) The Board and the Commission may by regulation prohibit or restrict fishing from any bridge so constructed that persons fishing on the bridge are endangered by passing vehicular or rail traffic. The jurisdiction of the Board extends to bridges over coastal fishing waters; the jurisdiction of the Commission extends to bridges over inland fishing waters. In any event, no one may fish from the draw span of any bridge.

(b) No person may obstruct, pollute, or diminish the natural flow of water into or through any fish hatchery in violation of the requirements of the Department of Water Resources and the State Stream Sanitation Committee.

(c) It is unlawful for any person to throw or cause to be thrown into the channel of any navigable waters fish offal in any quantity likely to hinder or prevent the passage of fish along such channel. The Board and the Commission may by regulation impose further restrictions upon the throwing of fish offal in any coastal fishing waters or inland fishing waters respectively.

(d) It is unlawful for any person without the authority of the owner of the equipment to take any fish from nets, traps, and other devices to catch fish which have been placed in the open waters of the State. Violation of this subsection is a misdemeanor punishable in the discretion of the court.

(e) Any master or other person having the management or control of a vessel in the navigable waters of the State who wilfully, wantonly, and unnecessarily does injury to any seine or net which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish is guilty of a misdemeanor punishable in the discretion of the court.

(f) Any person who wilfully destroys or injures any buoys, markers, stakes, nets, or other devices or property lawfully set out in the open waters of the State in connection with any fishing or fishery is guilty of a misdemeanor punishable in the discretion of the court. (1883, c. 137, s. 5; Code, ss. 3385, 3386, 3389, 3407, 3418; Rev., ss. 2444, 2465, 2478; C. S., ss. 1969, 1971, 1972; 1959, c. 405; 1965, c. 957, s. 2.)

§§ 113-266 to 113-270: Reserved for future codification purposes.

ARTICLE 21.

Inland Fishing Licenses.

§ 113-271. **Hook-and-line licenses in inland fishing waters.**—(a) Except as otherwise provided in this article, no one may fish by means of hook and line in inland fishing waters without having first procured a current and valid hook-and-line fishing license.

(b) Except where indicated otherwise, all hook-and-line fishing licenses are annual licenses. Annual fishing licenses, except for the combination hunting-fishing license, are issued beginning January 1 each year and run until the following December 31.

(c) The hook-and-line fishing licenses are granted upon such terms and for such prices as set out below. The amount stated in parentheses following the price of a license indicates the fee to be kept by a license agent when selling such license, out of the amount collected.

- (1) Resident State license, \$4.25 (\$0.25). This license is valid only for use by an individual resident of the State.
- (2) Resident State combination hunting-fishing license, \$6.25 (\$0.25). This license is valid only for use by an individual resident of the State. It is valid during the period set for annual hunting licenses in § 113-95.
- (3) Resident county license, \$1.65 (\$0.15). This license is valid only for use by an individual resident of the State within the county in which he lives.

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- (4) Resident State daily license, \$0.85 (\$0.10). This license is valid only for use on a single day by an individual resident of the State.
- (5) Nonresident State license, \$8.25 (\$0.25). This license is valid for use by an individual within the State.
- (6) Nonresident State five-day license, \$3.75 (\$0.25). This license is valid only for use on five consecutive days by an individual within the State.
- (7) Nonresident State daily license, \$1.65 (\$0.15). This license is valid only for use on a single day by an individual within the State. (1929, c. 335, ss. 1-4; 1931, c. 351; 1933, c. 236; 1935, c. 478; 1945, c. 529, ss. 1, 2; c. 567, ss. 1-4; 1949, c. 1203, s. 2; 1953, c. 1147; 1955, c. 198, s. 1; 1957, c. 849, s. 2; 1959, c. 164; 1961, c. 312; c. 834, ss. 3-6; 1965, c. 957, s. 2.)

§ 113-272. **Special trout licenses.**—(a) In addition to such hook-and-line fishing license as may be required in § 113-271, no one may fish in public mountain trout waters without having first procured a current and valid special trout license.

(b) All special trout licenses are annual licenses issued beginning January 1 each year and running until the following December 31.

(c) Public mountain trout waters are those waters designated by the Commission as having been stocked with trout at public expense.

(d) The special trout licenses issued by the Commission are as follows:

- (1) Resident special trout license, \$1.25 (\$0.25). This license is valid only for use by an individual resident of the State in public mountain trout waters.
- (2) Nonresident special trout license, \$3.25 (\$0.25). This license is valid for use by an individual within the State in public mountain trout waters. (1953, cc. 432, 828; 1955, c. 198, s. 2; 1961, c. 834, s. 2; 1965, c. 957, s. 2.)

§ 113 273. **Licenses for propagation and sale of fish.** — (a) All Licenses Annual.—All licenses under this section are annual licenses issued beginning January 1 each year and running until the following December 31.

(b) License Required; Regulations Governing Licensee.—Except as otherwise provided, no person may engage in any activity as to which a license is required by this section without having first procured a current and valid license for such activity. In implementing the provisions of this section, the Commission may by regulation govern every aspect of the licensee's dealings in fish and require licensees to keep records and statistics, be subject to inspection and audit, make periodic reports, post performance bonds payable to the Commission conditioned upon faithful compliance with provisions of law, and otherwise comply with reasonable regulations and administrative requirements that may be imposed under the authority of this section.

(c) Commercial Trout Pond License.—As used in this subsection, a "commercial trout pond" is an artificial impoundment of three acres or less lying on private land and not on a natural stream, but which may be supplied through screened and regulated supply lines, which pond must be stocked exclusively with hatchery-reared mountain trout obtained from such hatcheries as may be approved by the Commission. The Commission may by regulation prescribe qualifications of operators of commercial trout ponds, standards of operation, and the conditions under which trout from such ponds may be taken, transported, possessed, bought, and sold. Commercial trout pond licenses issued by the Commission are as follows:

- (1) Commercial trout fishing pond license, \$25.00. Authorizes the responsible licensed pond owner or operator to sell trout taken by fishermen from the pond to such fishermen.
- (2) Commercial trout holding pond license, \$25.00. Authorizes the responsi-

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ble licensed pond owner or operator to hold trout for such commercial purposes other than angling as may be authorized in the implementing regulations of the Commission.

(d) Game Fish Sale License. — The Commission may by regulation authorize and license the sale of game fish other than trout taken from private ponds for propagation purposes and for such other purposes as the Commission may specify, in the overall interests of the conservation of wildlife resources. The Commission may prescribe standards of operation and the conditions under which such fish may be taken, transported, possessed, bought, and sold. Game fish sale licenses are issued by the Commission for a fee of one dollar (\$1.00).

(e) Fish Propagation License.—The Commission may by regulation authorize and license the operation of fish hatcheries for species of fish which may be found in inland fishing waters. The Commission may prescribe standards of operation, qualifications of operators, and the conditions under which such fish may be taken, transported, possessed, bought, and sold. Fish propagation licenses issued by the Commission are as follows:

- (1) Trout and bass propagation license, \$5.00. Authorizes artificial propagation and sale of all species of fish permitted under the regulations of the Commission.
- (2) Restricted propagation license, \$0.50. Authorizes artificial propagation and sale of such species of fish, other than trout and bass, as may be designated in the license, in accordance with governing regulations of the Commission. (1929, c. 198, ss. 1, 2, 4; 1933, c. 430, s. 1; 1965, c. 957, s. 2.)

§ 113-274. **Permits.**—(a) As used in this article, the word “permit” refers to a written authorization issued without charge by an employee or agent of the Commission to an individual or a person to conduct some activity over which the Commission has jurisdiction. Such permit may serve in lieu of any license which may otherwise be required or it may be necessary that the permit be secured in addition to adherence to regular license requirements, as the Commission may direct, in accordance with the provisions of this subchapter.

(b) Except as otherwise specifically provided by law, no one may engage in any activity as to which a permit is required without having first procured a current and valid permit.

(c) Under such circumstances and upon such terms and conditions as it may prescribe by regulation, the Commission may issue the following permits:

- (1) Possession Permit.—Authorizes the possession of fresh-water fish lawfully acquired. The Commission may by regulation implement the issuance and supervision of this permit, in accordance with governing laws and regulations respecting the possession of fish.
- (2) Transportation Permit.—The Commission may require the use of transportation permits by persons required to be licensed under this article, or by persons and individuals exempt from license requirements, while transporting within the State the fish described in subdivision (1) above, as necessary to discourage unlawful taking or dealing in such fish and to control and promote the orderly and systematic transportation of fish within, into, through, and out of the State. Transportation permits may be issued for such fish transported either dead or alive, in accordance with such restrictions as may reasonably be imposed. Where convenient, the Commission may require the retention and use of the license or permit authorizing the taking or acquisition of the fish as a transportation permit. Where circumstances warrant, however, the Commission may require a separate additional transportation permit. Any substantial deviation from reasonable re-

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- quirements imposed by regulation or administratively under the authority of this section renders the transportation of the fish unlawful.
- (3) Exportation or Importation Permit.—Authorizes the exportation or importation of the fish described in subdivision (1) above from or into the State. The Commission may by regulation implement the issuance and supervision of this permit, in accordance with governing laws and regulations respecting the exportation and importation of such fish.
- (4) Other Permits.—In implementing the provisions of this subchapter, the Commission may require the use of such additional permits as may be necessary or desirable in carrying out the duties of the Commission. (1965, c. 957, s. 2.)

§ 113-275. General provisions respecting licenses. — (a) The Commission is authorized to make agreements with other jurisdictions as to reciprocal honoring of licenses in the best interests of the conservation of inland fishing resources.

(b) Every license issued under the provisions of this article is effective beginning upon its date of issuance unless the license expressly provides to the contrary, in accordance with regulations of the Commission and such administrative authority to set future effective dates in particular types of cases as may be delegated by the Commission to responsible employees or agents.

(c) Every license issued under the provisions of this article must be sold for the full prescribed amount notwithstanding that a portion of the prescribed license period may have elapsed prior to the license application.

(d) In implementing the sale and distribution of licenses issued under this article, the Commission may require license applicants to disclose such information as necessary for determining the applicant's eligibility for a particular license. Such information as deemed desirable to assist in enforcement of license requirements may be required to be recorded on the face of any license. Fixing the form of the license may be by reasonable administrative directive, and requirements as to such form need not be embodied in regulations of the Commission in order to be validly required.

(e) Where employees of the Commission sell licenses of a type also sold through license agents, such employees must sell the licenses for the full amount and remit such full amount to the Commission without any deduction of the stipulated license agent's fee.

(f) Except as exemptions or exceptions may be provided in § 113-276:

- (1) All licenses and permits under this article must be kept ready at hand by or about the person of individual licensees and permittees while engaged in the regulated operations;
- (2) All licenses and permits under this article are nontransferrable; and
- (3) All individuals engaged in operations subject to license or permit requirements must have an individual license or permit—except where such individuals are in the employ of and under the supervision of someone who has the license or permit or acceptable evidence of the same at hand and the activity is one for which a person not an individual may acquire a license.

(g) It is unlawful to buy, sell, lend, borrow, or in any other way transfer or receive or attempt to do any such things with respect to any nontransferrable license or permit for the purpose of circumventing the requirements of this article.

(h) It is unlawful for any person engaged in regulated operations under this article to refuse to exhibit or display any required license, permit, or identifica-

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tion upon the request of any employee or agent of the Commission or of any officer authorized to enforce the provisions of this article.

(i) It is unlawful to refuse to comply with any provisions of this article or of regulations and administrative requirements reasonably promulgated under the authority of this article.

(j) It is a misdemeanor punishable in the discretion of the court for any person:

- (1) Knowingly to engage in any activity regulated under this article with an improper, false, or altered license or permit;
- (2) Knowingly to make any application for a license or permit to which he is not entitled;
- (3) Knowingly to make any false, fraudulent, or misleading statement in applying for a license or permit under this article; or
- (4) To counterfeit, alter, or falsify any application, license, or permit under this article. (1929, c. 335, ss. 6, 10, 11; 1945, c. 567, ss. 5, 6; 1961, c. 329; 1965, c. 957, s. 2.)

§ 113-276. Members of armed forces deemed residents; exemptions and exceptions.—(a) Members of the armed forces of the United States stationed at a military facility in North Carolina are deemed residents of the State for the purpose of purchasing a resident State hook-and-line fishing license.

(b) A person holding a license under § 113-273 may take the fish regulated in connection with his license without any additional license under such restrictions, including permit requirements, as the Commission may by regulation impose. Provided, that such a licensee may not take fish from public fishing waters for use in any licensed operation.

(c) Every landowner, his spouse, and dependent members of his family under twenty-one years of age residing with him may fish upon the land of such landowner without being subject to the hook-and-line fishing license requirements of § 113-271.

(d) An individual under sixteen years of age is exempt from the hook-and-line fishing license requirements of § 113-271 anywhere within the State if:

- (1) He is accompanied by a responsible adult who is in compliance with any applicable license requirements; or
- (2) He is carrying a current and valid license which has been issued to one of his parents or to his guardian.

(e) A resident individual fishing with hook and line in the county of his residence using natural bait is exempt from the hook-and-line fishing license requirements of § 113-271. "Natural bait" is bait which may be beneficially digested by fish.

(f) Special device licenses issued by the Commission under its authority to regulate the taking of nongame fish are not required in the following instances:

- (1) When a landing net meeting the requirements set out below is used to take nongame fish in inland fishing waters.
- (2) When a landing net is used to assist in taking fish in inland fishing waters when the initial and primary method of taking is by the use of hook and line. Provided, that such license requirements as may be applicable to the fishing with hook and line are met.

The landing net authorized for use under subdivision (1) above must have a handle not exceeding eight feet in length and a hoop or frame to which the net is attached not exceeding sixty inches along its outer perimeter. The license exemption as to the use of landing nets may not be construed to apply to other special fishing devices the use of which is regulated by the Commission.

(g) Bow nets which have been properly licensed by the Commission may be

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used in inland fishing waters designated for and used by persons other than the licensee with the permission of the licensee.

(h) The Commission may by regulation require persons subject to license requirements and persons exempt from license requirements to carry or produce such identification as may be necessary to substantiate the person's entitlement to a particular license or to a particular exemption from license requirements. (1929, c. 335, ss. 1, 10; 1945, c. 567, ss. 1, 6; 1951, c. 1112, s. 2; 1961, cc. 312, 329; 1963, c. 170; 1965, c. 957, s. 2.)

§ 113-277. Suspension and revocation of licenses or permits.—(a) Upon conviction of any licensee or permittee under this article of a violation of any law or regulation administered by the Commission under the authority of this subchapter, the court in its discretion may order surrender of that license or permit plus any other license or permit issued by the Commission. The court may order suspension of any license or permit for some stipulated period or may order revocation of any license or permit for the remainder of the period for which it is valid. A period of suspension may extend past the expiration date of a license or permit, but no period of suspension longer than two years may be imposed. During any period of suspension or revocation, the licensee or permittee is not entitled to purchase or apply for any replacement, renewal, or additional license or permit regulating the same activity covered by the suspended or revoked license or permit. The Commission may by administrative action and by regulation devise procedures designed to implement license or permit suspensions and revocations that may be ordered by the courts.

(b) It is a misdemeanor punishable in the discretion of the court for any person during a period of suspension or revocation under the terms of this article:

- (1) To engage in any activity licensed in this article without the appropriate license or permit;
- (2) Knowingly to make any application for a license or permit to which he is not entitled;
- (3) Knowingly to make any false, fraudulent, or misleading statement in applying for a license or permit under this article;
- (4) To counterfeit, alter, or falsify any application, license, or permit under this article;
- (5) Knowingly to retain and use any license or permit which has been ordered revoked or suspended under the terms of this article; or
- (6) Wilfully to circumvent the terms of suspension or revocation in any manner whatsoever. (1965, c. 957, s. 2.)

§§ 113-278 to 113-290: Reserved for future codification purposes.

ARTICLE 22.***Regulation of Inland Fisheries.***

§ 113-291. General restrictions.—Except as specifically permitted in this subchapter or in regulations made under the authority of this subchapter, no person may take, possess, buy, sell, or transport:

- (1) Any fish taken from or found in inland fishing waters; or
- (2) Any inland game fish. (1965, c. 957, s. 2.)

§ 113-292. Authority of Commission in regulation of inland fishing.—(a) The Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict all fishing in inland fishing waters, and the taking of inland game fish in coastal fishing waters, with respect to:

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- (1) Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish;
 - (2) Seasons for taking fish;
 - (3) Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.
- (b) The Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict:
- (1) The opening and closing of inland fishing waters, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Commission; and
 - (2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all inland fisheries resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Commission in carrying out its duties.

To the extent not in conflict with provisions enforced by the Department, the Commission may exercise the powers conferred in this subsection in coastal fishing waters pursuant to its regulation of inland game fish in such waters.

(c) The Commission is authorized to make such regulations pertaining to the acquisition, disposition, transportation, and possession of fish in connection with private ponds as may be necessary in carrying out the provisions of this subchapter and the overall objectives of the conservation of wildlife resources. (1965, c. 957, s. 2.)

§ 113-293. Regulation of floats and number of lines; obstructing rivers or creeks; keeping open fishways in dams. — (a) The Commission may not adopt any regulation to require the exclusive use of a float made of plastic or any other substance in connection with hook-and-line fishing in inland fishing waters. In regulating the technique known as "jug fishing", however, the Commission may restrict or prohibit the use of floats made of glass.

(b) The Commission may not adopt any regulation limiting the number of lines to be used by any fishermen fishing by hook and line in inland fishing waters. The Commission, however, may regulate the number of such lines used in designated public mountain trout waters.

(c) It is unlawful for any person in inland fishing waters:

- (1) To set a net of any description across the main channel of any river or creek;
- (2) To erect so as to extend more than three fourths of the distance across any river or creek any stand, dam, weir, hedge, or other obstruction to the passage of fish;
- (3) To erect any stand, dam, weir, or hedge in any part of a river or creek required to be left open for the passage of fish; or,
- (4) Having erected any dam where the same was allowed, to fail to make and keep open such slope or fishway as may be required by law to be kept open for the free passage of fish.

The provisions of this section may not be construed to conflict in any way with the laws and regulations of any other agency with jurisdiction over the activity or subject matter in question. (Code, ss. 3387-3389; Rev., s. 2457; 1909, c. 466, s. 1; 1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., ss. 1878, 1974; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1951, c. 1045, s. 1; 1953, cc. 774, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2.)

§ 113-294. Penalties for unlawfully selling or buying game fish.— Any person who unlawfully sells, possesses for sale, buys, or offers or attempts to

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buy any game fish is guilty of a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) in addition to such other punishment as the court may impose in its discretion. (1965, c. 957, s. 2.)

§§ 113-295 to 113-300: Reserved for future codification purposes.

ARTICLE 23.

Administrative Provisions; Regulatory Authority of Commission.

§ 113-301. **Filing and publication of regulations.** — (a) All regulations of the Commission promulgated under the authority of this chapter or any other statutes, including provisions in chapters 75A and 143 of the General Statutes of North Carolina, must be filed with the Secretary of State in accordance with §§ 143-195 to 143-197. In addition, all such regulations of the Commission the violation of which constitutes a crime must be filed with the clerk of the superior court:

- (1) Of every county in the State, in the case of regulations of general application; and
- (2) Of the county or counties affected, in the case of special or local regulations affecting only a particular area.

(b) Regulations promulgated by the Commission under the authority of this subchapter must be published at least once in some newspaper published in and having general circulation throughout the State. (1965, c. 957, s. 2.)

§ 113-302. **Prima facie evidence from unlawful possession of game fish.**—The prima facie evidence provisions of § 113-103 respecting game apply equally to the possession of game fish in such establishments. (1965, c. 957, s. 2.)

§ 113-303. **Arrest, service of process and witness fees of protectors.**—All arrest fees and other fees that may be charged in any bill of costs for service of process by protectors must be paid to the county in which the trial is held. No witness fee may be taxed in any bill of costs by virtue of the appearance of a protector as a witness in a criminal case within his enforcement jurisdiction. Acceptance by any protector of any arrest fee, witness fee, or any other fee to which he is not entitled is a misdemeanor punishable in the discretion of the court. (1965, c. 957, s. 2.)

§ 113-304. **Reciprocal agreements by Commission.**—The Commission is empowered to make reciprocal agreements with other jurisdictions respecting the matters governed in this subchapter. Pursuant to such agreements the Commission may by regulation modify provisions of this subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of wildlife resources. (1965, c. 957, s. 2.)

§ 113-305. **Cooperative agreements by Commission.**—The Commission is empowered to enter into cooperative agreements with public and private agencies and individuals respecting the matters governed in this subchapter. Pursuant to such agreements the Commission may expend funds, assign employees to additional duties within or without the State, assume additional responsibilities, and take other actions that may be required by virtue of such agreements, in the overall best interests of the conservation of wildlife resources. (1965, c. 957, s. 2.)

§ 113-306. **Administrative authority of Commission; disposition of license funds; delegation of powers.**—(a) In the overall best interests of the conservation of wildlife resources, the Commission may lease or purchase lands, equipment, and other property; accept gifts and grants on behalf of the State;

(This subchapter IV is not effective until Jan. 1, 1966.)

establish wildlife refuges, management areas, and boating and fishing access areas, either alone or in co-operation with others; provide matching funds for entering into projects with some other governmental agency or with some scientific, educational, or charitable foundation or institution; condemn lands in accordance with the provisions of chapter 40 of the General Statutes and other governing provisions of law; and sell, lease, or give away property acquired by it. Provided, that any private person selected to receive gifts or benefits by the Commission be selected:

- (1) With regard to the overall public interest that may result; and
- (2) From a defined class upon such a rational basis open to all within the class as to prevent constitutional infirmity with respect to requirements of equal protection of the laws or prohibitions against granting exclusive privileges or emoluments.

(b) All money credited to, held by, or to be received by the Commission from the sale of licenses authorized by this subchapter must be consolidated and placed in the Wildlife Resources Fund.

(c) The Commission may, within the terms of policies set by regulation, delegate to the Executive Director all administrative powers granted to it. (1965, c. 957, s. 2.)

§ 113-307. **Adoption of federal laws and regulations.**—To the extent that the Commission is granted authority under this chapter or under any other provision of law, including chapter 75A of the General Statutes, over subject matter as to which there is concurrent federal jurisdiction, the Commission in its discretion may by reference in its regulations adopt relevant provisions of federal law and regulations as State regulations. To prevent confusion or conflict of jurisdiction in enforcement, the Commission may provide for an automatic incorporation by reference into its regulations of future changes within any particular set of federal laws or regulations relating to some subject clearly within the jurisdiction of the Commission. (1965, c. 957, s. 2.)

§§ 113-308 to 113-315: Reserved for future codification purposes.

ARTICLE 24.

Miscellaneous Transitional Provisions.

§ 113-316. **General statement of purpose and effect of revision of subchapter IV.**—To clarify the conservation laws of the State and the authority and jurisdiction of the Department of Conservation and Development and the North Carolina Wildlife Resources Commission: The Commissioner of Commercial Fisheries and the Division of Commercial Fisheries of the Department of Conservation and Development are renamed the Commissioner of Commercial and Sports Fisheries and the Division of Commercial and Sports Fisheries; the Commercial Fisheries Committee of the Department of Conservation and Development is renamed the Commercial and Sports Fisheries Committee; the Commercial Fisheries Advisory Board is abolished and in its stead is created the Commercial and Sports Fisheries Advisory Board; commercial fishing waters are renamed coastal fishing waters and the Division of Commercial and Sports Fisheries is given jurisdiction over and responsibility for the marine and estuarine resources in coastal fishing waters; the laws pertaining to commercial fishing operations regulated by the Department of Conservation and Development are consolidated and revised generally and broadened to reflect the jurisdictional change respecting coastal fisheries; and the connected and related laws pertaining to fisheries resources administered by the North Carolina Wildlife Resources Commission are recodified to harmonize in such revision and consolidation. (1965, c. 957, s. 1.)

(This subchapter IV is not effective until Jan. 1, 1966.)

§ 113-317. **Effect of revision on powers of Department of Conservation and Development and Wildlife Resources Commission.**—The intention of this subchapter is to continue and broaden the powers and authority of the Department of Conservation and Development and the North Carolina Wildlife Resources Commission with respect to all matters pertaining to the conservation of fisheries resources, except as specific modifications, qualifications, and restrictions may appear in this subchapter. The failure to carry forward any specific administrative or regulatory power contained in the former statutes in chapter 113 of the General Statutes is not to be deemed to deprive the Department or the Commission of the authority in question. The failure to carry forward any specific prohibitions contained in the former statutes in chapter 113 of the General Statutes or of local laws repealed by this subchapter does not indicate an intention to make lawful the activity formerly prohibited; in the absence of provisions in this subchapter respecting such activity, the Department and the Commission in their discretion may continue, modify, or abolish the previous prohibition through the passage of regulations. In numerous instances particular provisions contained in the former law are omitted from this codification in order to leave the matter within the discretionary power of the Board and the Commission. (1965, c. 957, s. 3.)

§ 113-318. **Effect of change of names of Commissioner and Division of Commercial Fisheries to Commissioner and Division of Commercial and Sports Fisheries.**—Upon the effective date of this subchapter the Commissioner of Commercial Fisheries and the Division of Commercial Fisheries of the Department of Conservation and Development are renamed the Commissioner of Commercial and Sports Fisheries and the Division of Commercial and Sports Fisheries of such Department respectively. The change of name is not intended to disrupt continuance of employment, tenure, seniority, or any other rule, regulation, provision of law, custom, or administrative practice presently applicable to the Commissioner and the Division of Commercial Fisheries and employees of the Division—except as changes are made necessary by provisions within this subchapter. In addition, all contracts and all other legal or official documents and provisions applicable to the Commissioner and the Division of Commercial Fisheries and employees of that Division are made continuingly applicable to the Commissioner and the Division of Commercial and Sports Fisheries and employees of the Division. In particular, subject to the provisions of this subchapter, all appropriations, credits, revenues, funds, moneys, obligations, equipment, vehicles, vessels, offices, and other property, privileges, rights, and duties pertaining to the Commissioner and the Division of Commercial Fisheries and employees of that Division are made fully applicable to the Commissioner and the Division of Commercial and Sports Fisheries and employees of the Division.

Upon the effective date of this subchapter all money and credit from any fund, including the Commercial Fisheries Fund, the Commercial Fisheries Experimental and Oyster Demonstration Fund, the fund provided for in former §§ 113-216.3 and 113-216.4 of the General Statutes, and the Special Commercial Fisheries Equipment Fund, are transferred to the general account of the Department of Conservation and Development for the use of the Division of Commercial and Sports Fisheries. Except as otherwise provided in this subchapter, all appropriations and receipts of the Department of Conservation and Development for the conservation of marine and estuarine resources must be paid into such general account for the use of the Division. Notwithstanding the provisions of this section, the Department must provide for separate accounting or funding for any receipts of the Division which are required by law to be restricted as to their purpose of expenditure. (1965, c. 957, s. 4.)

Editor's Note.—As to the effective date of this subchapter, see Editor's note to § 113-127.

(This subchapter IV is not effective until Jan. 1, 1966.)

§ 113-319. **Effect of change of name of Commercial Fisheries Committee to Commercial and Sports Fisheries Committee.**—Upon the effective date of this subchapter, the Commercial Fisheries Committee of the Board of Conservation and Development is renamed the Commercial and Sports Fisheries Committee of such Board. The change of name is not intended to change the composition of the Committee or its status and all statutes, rules, regulations, bylaws, contracts, and other legal and official documents or provisions applicable to the Commercial Fisheries Committee are, unless contrary to the purposes of this subchapter, made continuingly applicable to the Commercial and Sports Fisheries Committee. (1965, c. 957, s. 5.)

Editor's Note.—As to the effective date of this subchapter, see Editor's note to § 113-127.

§ 113-320. **Dissolution of Commercial Fisheries Advisory Board; transfer of appropriations, property, privileges, etc., to Commercial and Sports Fisheries Advisory Board.**—Upon the effective date of this subchapter, the Commercial Fisheries Advisory Board is dissolved. Upon the appointment of the Commercial and Sports Fisheries Advisory Board, the Advisory Board will become entitled to all appropriations, property, and privileges enjoyed by the Commercial Fisheries Advisory Board. To the extent appropriate to the purposes of this subchapter, all provisions in statutes, regulations, bylaws, contracts, and other legal or official documents or provisions applicable to the Commercial Fisheries Advisory Board are made applicable to the Commercial and Sports Fisheries Advisory Board. (1965, c. 957, s. 6.)

Editor's Note.—As to the effective date of this subchapter, see Editor's note to § 113-127.

§ 113-321. **Retention of boundary line between inland and commercial fishing waters; application of provisions as to commercial fishing waters to coastal fishing waters; regulation of fishing in joint fishing waters.**—Subject to the power of future modification by the Board and Commission as provided in this subchapter, the existing boundary line between inland fishing waters and commercial fishing waters is retained as the boundary line between inland fishing waters and coastal fishing waters. Except as this subchapter provides otherwise, all statutes, regulations, bylaws, contracts, and other legal or official documents or provisions applicable to commercial fishing waters are made applicable to coastal fishing waters. Those areas of commercial fishing waters to which hook-and-line fishing license requirements of the North Carolina Wildlife Resources Commission applied on January 1, 1965, are to be deemed joint fishing waters, subject to modification by agreement between the Department of Conservation and Development and the Commission. Until such agreement provides otherwise, the Commission may continue to enforce license requirements and applicable inland fishing laws and regulations in such waters. (1965, c. 957, s. 7.)

Cross Reference.—See Editor's note to § 113-127.

Chapter 114.

Department of Justice.

Article 1.

Attorney General.

Sec.

114-4.2. Assistant attorneys general and staff assigned to State Highway Commission and chairman.

114-4.3. Additional assistant attorneys general.

114-4.4. Deputy attorneys general.

Article 3.

Division of Criminal Statistics.

Sec.

114-11.1. [Repealed.]

Article 4.

State Bureau of Investigation.

114-19. Taking fingerprints and photographs of suspects and convicts; criminal statistics.

ARTICLE 1.

Attorney General.

§ 114-4.2. **Assistant attorneys general and staff assigned to State Highway Commission and chairman.**—The Attorney General is authorized to appoint three assistant attorneys general, in addition to those now provided by law, to be assigned, together with an adequate number of staff attorneys, to the State Highway Commission and the chairman of the State Highway Commission, and such assistant attorneys general and staff attorneys shall also perform such additional duties as may be assigned to them by the Attorney General, and shall otherwise be subject to all provisions of the statutes relating to assistant attorneys general and staff members. There shall be appropriated to the State Highway Commission or Department from the State Highway Fund such sum as may be necessary to pay the salaries of said assistant attorneys general, other members of the legal staff herein provided for, and necessary secretaries. The State Highway Commission shall provide adequate office equipment and supplies. (1957, c. 65, s. 9; 1965, c. 55, s. 16; c. 408, s. 1.)

Editor's Note.—The first 1965 amendment, effective July 1, 1965, substituted "chairman of the State Highway Commission" for "Director of Highways" in the first sentence.

The second 1965 amendment substituted "three assistant attorneys general" for "an assistant attorney general" near the beginning of the section and substituted "as-

sistant attorneys general" for "assistant attorney general" at two other places in the section. The act also provides that it is not its intent and purpose to add more personnel to the Attorney General's staff but rather to authorize three existing positions to have the status of assistant attorney general.

§ 114-4.3. **Additional assistant attorneys general.** — The Attorney General is authorized to appoint two assistant attorneys general in addition to those now provided by law, who shall be subject to the general provisions of the statutes relating to assistant attorneys general. (1959, c. 1265; 1965, c. 408, s. 1.)

Editor's Note. — The 1965 amendment substituted "two assistant attorneys general" for "an assistant attorney general." The act also provides that it is not its intent and purpose to add more personnel

to the Attorney General's staff but rather to authorize three existing positions to have the status of assistant attorney general.

§ 114-4.4. **Deputy attorneys general.**—The Attorney General is hereby authorized to designate from among the assistant attorneys general authorized by this article not more than four (4) of such assistants as deputy attorneys general to perform such duties and undertake such responsibilities as the Attorney General may direct. (1963, c. 355.)

§ 114-7. **Salary of Attorney General.** — The Attorney General shall re-

ceive an annual salary of eighteen thousand dollars (\$18,000.00), payable monthly. (1929, c. 1, s. 2; 1947, c. 1043; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 3.)

Editor's Note.—

The 1963 amendment, effective July 1,

1963, increased the salary from \$13,500.00 to \$18,000.00.

ARTICLE 3.

Division of Criminal Statistics.

§ 114-11.1: Repealed by Session Laws 1965, c. 310, s. 4, effective July 1, 1965.

ARTICLE 4.

State Bureau of Investigation.

§ 114-15. **Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.** — The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson, or arson, damage of, theft from, or theft of, or misuse of, any state-owned personal property, buildings, or other real property.

All records and evidence collected and compiled by the Director of the Bureau and his assistants shall not be considered public records within the meaning of § 132-1, and following, of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. Provided that all records and evidence collected and compiled by the Director of the Bureau and his assistants shall, upon request, be made available to the solicitor of any district if the same concerns persons or investigations in his district.

In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the Director and any of his assistants who are witnesses in cases arising in courts of this State. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the Treasurer of the State of North Carolina, and there credited to the Bureau of Identification and Investigation Fund. (1937, c. 349, s. 6; 1947, c. 280; 1965, c. 772.)

Editor's Note.—

The 1965 amendment added the last sentence in the first paragraph.

Right to Court Order Permitting In-

spection of Records and Evidence.—This section gives to a defendant in a criminal action no unqualified right to have a court of competent jurisdiction enter an order

permitting him an inspection of "all records and evidence collected and compiled" by the State Bureau of Investigation in a

criminal case pending against him. State v. Goldberg, 261 N.C. 181, 134 S.E.2d 334 (1964).

§ 114-19. Taking fingerprints and photographs of suspects and convicts; criminal statistics.—Every chief of police and sheriff in the State of North Carolina is hereby authorized to take, or cause to be taken, the fingerprints and photographs of any person charged with the commission of a felony and of any person who has been committed to jail or prison upon conviction of a crime. No officer shall take the photograph of a person arrested and charged with a misdemeanor, unless such person is a fugitive from justice or unless such person shall, at the time of arrest, have in his possession property or goods reasonably believed by such officer to have been stolen, or unless the officer has reasonable grounds to believe that such person is wanted by the Federal Bureau of Investigation, the State Bureau of Investigation or some other law enforcement officer or agent.

Any fingerprints or photographs taken pursuant to this section may be forwarded by the chief of police or sheriff to the Director of the State Bureau of Investigation.

It shall be the duty of the State Bureau of Investigation to receive and collect police information, to assist in locating, identifying, and keeping records of criminals in this State, and from other states, and to compare, classify, compile, publish, make available and disseminate any and all such information to the sheriffs, constables, police authorities, courts or any other officials of the State requiring such criminal identification, crime statistics and other information respecting crimes local and national, and to conduct surveys and studies for the purpose of determining so far as is possible the source of any criminal conspiracy, crime wave, movement or co-operative action on the part of the criminals, reporting such conditions, and to co-operate with all officials in detecting and preventing. (1965, c. 1049, s. 1.)

Chapter 115.

Elementary and Secondary Education.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

Article 5.

County and City Boards of Education.

Sec.

115-51. School food services provided by county and city boards of education.

Article 6.

Powers and Duties of Superintendents.

115-58. Duties with respect to election of principals, teachers and other personnel.

Article 7.

School Committees—Their Duties and Powers.

115-70. Appointment; number of members; terms; vacancies; advisory council.

SUBCHAPTER VI. SCHOOL PROPERTY.

Article 15.

School Sites and Property.

Sec.

115-126. Sale, exchange or lease of school property; easements and rights of way.

SUBCHAPTER VII. EMPLOYEES.

Article 17.

Principals' and Teachers' Employment and Contracts.

115-145. Removal of principals and teachers; revocation of certificate.

Article 18.

Certification and Salaries of Employees; Workmen's Compensation.

115-153. Certifying and regulating the

GENERAL STATUTES OF NORTH CAROLINA

Sec.

grade and salary of teachers; furnishing to county or city boards available personnel information.

- 115-153.1. Authority of county and city boards of education to purchase annuity contracts for employees.

SUBCHAPTER VIII. PUPILS.

Article 20.

General Compulsory Attendance Law.

- 115-168. Attendance counselors; reports; prosecutions.
115-170. Investigation and prosecution by attendance counselor.

Article 20A.

Child Health Program.

- 115-175.1. Expenditures.

SUBCHAPTER IX. SCHOOL TRANSPORTATION.

Article 22.

School Buses.

- 115-181.1. [Repealed.]
115-187. Inspection of school buses and activity buses; report of defects by drivers; discontinuing use until defects remedied.

SUBCHAPTER X. INSTRUCTION.

Article 24.

Courses of Study.

- 115-202. Boards of education required to provide courses in operation of motor vehicles.

Article 27.

Vocational Education.

- 115-230.1. Development of Industrial Education Program.

Article 28.

Textile Training School.

- 115-236 to 115-239. [Transferred.]

Article 31.

Private Business, Trade and Correspondence Schools.

- 115-245. Definitions.
115-246. Exemptions.
115-247. State Board of Education to administer article; issuance of diplomas by schools; investigation and inspection; regulations and standards.

Sec.

- 115-248. License required; application for license; school bulletins; requirements for issuance of license; license restricted to courses indicated; supplementary applications.

- 115-249. Duration and renewal of licenses; notice of change of ownership, administration, etc.; license not transferable.

- 115-250. "Commercial Education Fund"; refund of fees.

- 115-251. Suspension, revocation or refusal of license; notice and hearing; judicial review; grounds.

- 115-252. Private schools advisory committee; appointment; duties.

- 115-253. Execution of bond required; filing and recording; actions upon bond.

- 115-254. Operating school without license or bond made misdemeanor.

- 115-254.1. Contracts with unlicensed schools and evidences of indebtedness made null and void.

Article 32.

Non-Public Schools.

- 115-255. Responsibility of State Board of Education to supervise non-public schools; notice of intention to operate new school.

Article 33.

State Board of Education to License Certain Institutions and Regulate Degrees.

- 115-258 to 115-260. [Repealed.]

Article 37.

Training of Educable Mentally Handicapped Children.

- 115-300. Organization of program; rules and regulations; eligibility for training; information to local school units.

- 115-301. Authority of local boards to establish programs; joint operation; duty of local superintendent.

- 115-302. Expenditure of State and local funds; gifts.

- 115-303. Requests for teachers and other allotments from State Board; reasons for disapproval of requests to be given; transfer of funds.

- 115-304. Funds available for program.

- 115-305. Determination of allotments by State Board; salary schedule for teachers.

Article 38.**Education of Exceptionally Talented Children.**

Sec.

- 115-306. Educational program established.
- 115-307. Definitions.
- 115-308. Division for Education of Exceptionally Talented Children created.
- 115-309. Division administered by Director; appointment and salary of Director; assistance, clerical help and travel allowances.
- 115-310. Supervisor for testing and pupil classification; appointment and duties; specialists for counseling and identification of students.
- 115-311. District supervisors; appointment, duties and funds.
- 115-312. Powers and duties of Director generally.
- 115-313. Local programs; submission for approval; allotment of funds; teachers; joint programs.
- 115-314. Programs in pilot centers.
- 115-315. Programs financed out of local funds not affected.

Article 39.**Voluntary Endowment Funds for Public Schools.**

- 115-316. Creation of endowment funds; administration.
- 115-317. Boards of trustees public corporations; powers and authority generally; investments.
- 115-318. Expenditure of funds; pledges.
- 115-319. When only income from fund expended.
- 115-320. Property and income of board of trustees exempt from State taxation.

SUBCHAPTER XI. SPECIAL EDUCATIONAL INSTITUTIONS.**Article 40.****State School for the Blind.**

- 115-321. Incorporation, name and management.
- 115-322. Directors; appointment; terms; vacancies.

Sec.

- 115-323. President, executive committee, and other officials; election, terms, and salaries.
- 115-324. Meetings of the board and compensation of the members.
- 115-325. Admission of pupils; how admission obtained.
- 115-326. Admission of curable blind.
- 115-327. Admission of pupils from other states.
- 115-328. Board may confer degrees.
- 115-329. Election of officers.
- 115-330. State Treasurer is ex officio treasurer of institution.
- 115-331. Reports of board to Governor.
- 115-332. Removal of officers.
- 115-333. Employees.
- 115-334. When clothing, etc., for pupils paid for by county.
- 115-335. Title to farm vested in directors.

Article 41.**State Schools for the Deaf.**

- 115-336. Incorporation, name and location.
- 115-337. Incorporation and location of Eastern North Carolina School for the Deaf.
- 115-338. Control and management by board of directors; composition; appointment, term and removal of members; vacancies.
- 115-339. Organization of board; election and salaries of superintendents, officers, teachers and agents; application of State Personnel Act.
- 115-340. Qualifications of superintendents; powers and duties generally.
- 115-341. Pupils admitted; education.
- 115-342. Free textbooks and State purchase and rental system.
- 115-343. Powers of board.

Article 42.**Central Orphanage of North Carolina.**

- 115-344. Creation; powers.
- 115-345. Directors; selection, self-perpetuation, management of corporation.
- 115-346. Board of trustees; appropriations; treasurer; board of audit.
- 115-347. Training of orphans.
- 115-348. Control over orphans.

SUBCHAPTER I. GENERAL PROVISIONS.**ARTICLE 1.***State Plan for Public Education.*

§ 115-1. **General and uniform system of schools.**—A general and uniform system of public schools shall be provided throughout the State, in accord-

ance with the provisions of article IX of the Constitution of North Carolina, wherein tuition shall be free of charge to all children of the State between the ages of six and twenty-one years, and to every person twenty-one years of age, or over, who has not completed a standard high school course of study. The minimum six months school term required by article IX of the Constitution is hereby extended to embrace a total of one hundred and eighty days of school in order that there shall be operated in every county and city administrative unit a uniform school term of nine months without the levy of a State ad valorem tax therefor, and in order that substantial equality of educational opportunity may be available to all children of the State. (1955, c. 1372, art. 1, s. 1; 1963, c. 448, s. 24.)

Editor's Note.—

The title of this chapter was changed from "Education" to "Elementary and Secondary Education" by Session Laws 1963, c. 448, s. 31, effective July 1, 1963. The 1963 amendment, effective July 1, 1963, deleted the words "or who desires to

study the vocational subjects taught in such school" following the word "study" at the end of the first sentence.

Cited in Fremont City Board of Education v. Wayne County Board of Education, 259 N. C. 280, 130 S. E. (2d) 408 (1963).

§ 115-4. Administrative units classified.

Cited in Fremont City Board of Education v. Wayne County Board of Education, 259 N. C. 280, 130 S. E. (2d) 408 (1963).

§ 115-6. Schools classified and defined.—The different types of public schools are classified and defined as follows:

- (1) An elementary school, that is, a school which embraces a part or all of the eight elementary grades.
- (2) A high school, that is, a school which embraces a high school department above the elementary grades and which offers at least the minimum high school course of study prescribed by the State Board of Education.
- (3) A union school, that is, a school which embraces both elementary and high school grades.
- (4) A junior high school, that is, a school which embraces not more than the first year of high school with not more than the upper two elementary grades.
- (5) A senior high school, that is, a school which embraces the tenth, eleventh and twelfth grades. (1955, c. 1372, art. 1, s. 6; 1959, c. 915, s. 1; 1963 c. 448, s. 24.)

Editor's Note.—

The 1963 amendment, effective July 1,

1963, struck out former subdivision (6), relating to vocational schools.

§ 115-7. Term "district" defined.—The term "district" here used is defined to mean any convenient territorial division or subdivision of a county, created for the purpose of maintaining within its boundaries one or more public schools. It may include one or more incorporated towns or cities, or parts thereof, or one or more townships, or parts thereof, all of which territory is included in a common boundary. There shall be three different kinds of districts:

- (1) The nontax district, that is, a territorial division of a county administrative unit under the control of the county board of education, or a city administrative unit under the control of a city board of education, but having no special local tax fund voted by the people for supplementing State and county funds.
- (2) The local tax district, that is, a territorial division of a county administrative unit under the control of the county board of education, or a city administrative unit under the control of a city board of education but having in addition to State and county funds, a special local tax fund voted by the people for supplementing State and county funds.

- (3) The administrative district, that is, a territorial division of a county administrative unit under the control of a county board of education which is established for administrative purposes and which consists of one or more local tax districts and/or nontax areas or bond districts of the county administrative unit. (1955, c. 1372, art. 1, s. 7; 1965, c. 584, s. 1.)

Editor's Note.—The 1965 amendment substituted “three” for “two” in the third sentence and added subdivision (3).

§ 115-8. Officials defined.—The governing board of a county administrative unit is “the county board of education.” The governing board of a city administrative unit is “the city board of education.” The governing board of the school district is “the district committee.” The executive officer of either a county or city administrative unit shall be called “superintendent.” The executive head of a school shall be called “principal.” (1955, c. 1372, art. 1, s. 8; 1965, c. 584, s. 2.)

Editor's Note.—The 1965 amendment deleted “district or” preceding “school” in the last sentence.

This section sets up two coordinate classes of local administrative units: (1) County units, and (2) city administrative

units. *State Highway Comm'n v. Greensboro City Bd. of Educ.*, 265 N.C. 35, 143 S.E.2d 87 (1965).

Cited in *Turner v. Gastonia City Board of Education*, 270 N. C. 456, 109 S. E. (2d) 211 (1959).

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

ARTICLE 2.

The State Board of Education.

§ 115-11. Powers and duties generally.

- (6) Apportionment of Funds.—The Board shall have authority to apportion and equalize over the State all State school funds and all federal funds granted to the State for assistance to educational programs administered within or sponsored by the public school system of the State.
- (8) Acceptance of Federal Funds and Aid.—The Board is authorized to accept, receive, use or reallocate to local school units any federal funds, or aids, that may be appropriated now or hereafter by the federal government for the encouragement and improvement of any phase of the free public school program which, in the judgment of the Board, will be beneficial to the operation of the schools. However, the Board is not authorized to accept any such funds upon any condition that the public schools of this State shall be operated contrary to any provisions of the Constitution or statutes of this State.
- (12) Power to Allot Special Teaching Personnel and Funds for Clerical Assistants to Principals.—The Board shall have power to provide for the enrichment and strengthening of educational opportunities for the children of the State, and when sufficient State funds are available to provide first for the allotment of such a number of teachers as to prevent the teacher load from being too great in any school, the Board is authorized, in its discretion, to make an additional allotment of teaching personnel to county and city administrative units of the State to be used either jointly or separately, as the Board may prescribe. Such additional teaching personnel may be used in the administrative units as librarians, special teachers, or supervisors of instruction and for other special instructional services such as art, music, physical education, adult education, special education, or in-

dustrial arts as may be authorized and approved by the Board. The salary of all such personnel shall be determined in accordance with the State salary schedule adopted by the Board.

In addition, the Board is authorized and empowered, in its discretion, to make allotments of funds for clerical assistants for classified principals and for attendance counselors.

The Board is further authorized, in its discretion, to allot teaching personnel to county and city administrative units for experimental programs and purposes.

- (14) **Miscellaneous Powers and Duties.**—All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:
- a. To certify and regulate the grade and salary of teachers and other school employees.
 - b. To adopt and supply textbooks.
 - c. To adopt a standard course of study upon recommendation of the State Superintendent of Public Instruction.
 - d. To formulate rules and regulations for the enforcement of the compulsory attendance law.
 - e. Repealed by Session Laws 1963, c. 448, s. 27.
 - f. To report to the General Assembly on the operation of the State Literary Fund.
 - g. To manage and operate a system of insurance for public school property.
- (15) **Acceptance of Gifts and Grants.**—The Board is authorized to accept, receive, use, or reallocate to local school units any gifts, donations, grants, bequests, or other forms of voluntary contributions.
- (16) **Power to Provide for Programs or Projects in the Cultural and Fine Arts Areas.**—The Board is authorized and empowered, in its discretion, to make provisions for special programs or projects of a cultural and fine arts nature for the enrichment and strengthening of educational opportunities for the children of the State.
- For this purpose, the Board may use funds received from gifts or grants and, with the approval of the Director of the Budget, may use State funds which the Board may find available in any budget administered by the Board.
- (17) **Power to Provide Library Resources, Textbooks and Other Instructional Materials to Private Schools.**—The State Board of Education or any other State agency designated by the Governor shall have the power and authority to provide library resources, textbooks, and other instructional materials purchased from federal funds appropriated for the funding of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362, effective April 11, 1965) or other acts of Congress for the use of children and teachers in private elementary and secondary schools in the State as required by acts of Congress and rules and regulations promulgated thereunder. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2.)

Editor's Note.—

The 1961 amendment added to subdivision (6) the words "and all federal funds granted to the State for assistance to local school units." It also changed subdivision (8) by striking out in line two the words "accept for the schools of the State" and inserting in lieu thereof the

words "accept, receive, use or reallocate to local school units."

The first 1963 amendment, effective July 1, 1963, substituted "educational programs administered within or sponsored by the public school system of the State" for "local school units" at the end of subdivision (6). In subdivision (14) the amend-

ment repealed former subparagraph e, relating to licensing of educational institutions and conferring of degrees, deleted former subparagraph g, relating to schools for adult education, and relettered former subparagraph h as g.

The second 1963 amendment added the third paragraph of subdivision (12) and also subdivisions (15) and (16).

The third 1963 amendment changed the last word in the second paragraph of subdivision (12) from "officers" to "counselors."

The 1965 amendment added subdivision (17).

As the rest of the section was not changed, only subdivisions (6), (8), (12), (14), (15), (16) and (17) are set out.

ARTICLE 3.

State Superintendent of Public Instruction.

§ 115-13. Office and salary.—The Superintendent shall keep his office in the Education Building in Raleigh, and his salary shall be ten thousand dollars (\$10,000.00) a year, payable monthly.

From and after the time the State Superintendent of Public Instruction shall take the oath of office and begin serving the term for which he is to be elected in 1956, he shall receive an annual salary of eighteen thousand dollars (\$18,000.00): Provided, that said salary shall be paid out of the Contingency and Emergency Fund if funds for same are not available in the General Fund for the biennium ending June 30, 1957. (1955, c. 1372, art. 3, s. 2; c. 1374; 1963, c. 1178, s. 2.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, increased the salary from \$13,500.00 to \$18,000.00.

ARTICLE 5.

County and City Boards of Education.

§ 115-18. How constituted.

Local Modification. — Burke: 1963, c. 1138; Camden: 1965, c. 594, s. 3.

Cited in State Highway Comm'n v.

Greensboro City Bd. of Educ., 265 N.C. 35, 143 S.E.2d 87 (1965).

§ 115-19. How nominated and elected.

Local Modification. — Burke: 1963, c. 1138; Graham: 1961, c. 475, repealing 1959, c. 85; Henderson: 1961, c. 142; Robeson: 1963, c. 240; Camden: 1965, c. 594, s. 3; Graham: 1965, c. 404, repealing 1959, c. 85; Macon: 1965, c. 601; Pitt: 1965, cc. 89, 656; Stokes: 1965, c. 967.

By virtue of Session Laws 1961, c. 69, Washington should be stricken from the replacement volume.

Editor's Note.—

Section 4 of c. 89, Session Laws 1965, provides that art. 5, c. 115, of the General Statutes "shall be applicable to Pitt County except as modified, or when in conflict with the provisions of this act."

As to former statute, etc.—

The citation in the 1960 replacement volume should read "State ex rel. Atkins v. Fortner, 236 N.C. 264, 72 S.E.2d 594 (1952)."

§ 115-20. County board of elections to provide for nominations.

Local Modification. — Burke: 1963, c. 1138.

§ 115-21. City board of education, how constituted; how to employ principals, teachers, janitors and maids.

Final Authority for Election of Teachers Vested in Board. — The superintendent makes recommendations, but the final au-

thority for the election of teachers is vested in the school board. Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

§ 115-24. Vacancies in office.

Local Modification. — Stokes: 1965, c. 967.

§ 115-25. Eligibility for board membership.

Local Modification. — Cumberland and Robeson: 1963, c. 311.

§ 115-27. Board a body corporate.

Committees are not given final authority. Their acts are under, subordinate to, and controlled by, the county or city boards. *Revels v. Oxendine*, 263 N.C. 510, 139 S.E.2d 737 (1965).

Actions against Board.—

In accord with 2nd paragraph in original. See *Fields v. Durham City Board of Education*, 251 N. C. 699, 111 S. E. (2d) 910 (1960).

The Tort Claims Act, applicable to the State Board of Education and to the State departments and agencies, except as amended by § 143-300.1, does not include local units such as county and city boards

of education. *Turner v. Gastonia City Board of Education*, 195 F. Supp. 109 S. E. (2d) 211 (1959).

Tort action against city school board based on negligence of employee not allowed on grounds of governmental immunity. See *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

Stated in *State Highway Comm'n v. Greensboro City Bd. of Educ.*, 265 N.C. 35, 143 S.E.2d 87 (1965).

Cited in *Morrow v. Mecklenburg County Board of Education*, 195 F. Supp. 109 (1961).

§ 115-29. Compensation of board members.

Local Modification.—Orange: 1963, c. 516.

§ 115-31. Suits and actions.

Cited in *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

§ 115-35. Powers and duties of county and city boards generally.

(f) **Power to Regulate Fees, Charges and Solicitations.** — County and city boards of education shall adopt rules and regulations governing solicitations of, sales to, and fund raising activities conducted by, the students and faculty members in schools under their jurisdiction, and no fees, charges, or costs shall be collected from students and school personnel without approval of the board of education as recorded in the minutes of said board; provided, this section shall not apply to such textbook fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved by county and city boards of education shall be reported to the State Superintendent of Public Instruction.

(g) **Acceptance and Administration of Federal or Private Funds.**—County and city boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds. In the administration of such funds, county and city boards of education shall have authority to enter into contracts with and to co-operate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other county and city boards of education. County and city boards of education shall furnish such information as shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this section. (1955, c. 1372, art. 5, s. 18; 1957, c. 262; 1963, c. 425; 1965, c. 1185, s. 1.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, added subsection (f).

The 1965 amendment added subsection (g).

As the rest of the section was not affected by the amendments, it is not set out.

The phrase "without assuming liability therefor" in subsection (d) of this section was inserted for the purpose of making it clear that governing authorities were

not waiving governmental immunity from torts, and does not restrict the power of such boards to contract for transportation or other required items necessary in connection with duly approved interscholastic activities. *State v. McKinnon*, 254 N. C. 1, 118 S. E. (2d) 134 (1961).

Quoted in *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

§ 115-36. Length of school day, school month, and school term.—

(a) **School Day.**—The length of the school day shall be determined by the several county and city boards of education for all public schools in their respective administrative units, and the minimum time for which teachers shall be employed in the schoolroom or on the grounds supervising the activities of children shall not be less than six hours.

(c) **School Term.**—There shall be operated in every school in the State a uniform school term for instructing pupils of one hundred eighty days: Provided, that the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, may suspend the operation of any school or schools in such units, not to exceed a period of sixty days of said term of one hundred eighty days, when in the sound judgment of the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, the low average of daily attendance in any school justifies such suspension: Provided, further, that when the operation of any school is suspended no teacher therein shall be entitled to pay for any portion of the suspended term.

Full authority is hereby given to the State Board of Education during any period of emergency to order general and, if necessary, extended recesses or adjournment of the public schools in any section of the State where the planting or harvesting of crops or any emergency conditions make such action necessary. (1955, c. 1372, art. 5, s. 19; 1963, c. 1223, s. 2.)

Editor's Note.—The 1963 amendment deleted the former last sentence of subsection (a) which read as follows: "Boards of education, however, may authorize rural schools in certain seasons of the year, when the agricultural needs of the farm demand it, to be conducted for less than six hours a day." It further amended subsection (c) by deleting the words "or when the State Board of Edu-

cation, or the board of education of any administrative unit with the approval of the State Board of Education, shall find that the needs of agriculture, or any other condition, may make such suspension necessary within such unit or any district thereof" preceding the proviso at the end of the first paragraph thereof. Only subsections (a) and (c) are set out.

§ 115-39. Requirements and limitations of board in selecting superintendent and his term of office.

Local Modification.—Davidson: 1965, c. 271; Lee (as to term of office of county superintendent): 1963, c. 481.

§ 115-47. Pay of teachers and other school employees.

Quoted in *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

§ 115-49. Salary schedule for teachers.—Every county and city board of education may adopt, as to teachers and school officials not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience,

professional fitness, and continued service in the same school system; but if any county or city board of education shall fail to adopt such a schedule, the State salary schedule shall be in force. No teacher shall receive a salary higher than that provided in the salary schedule, unless by action of the board of education a higher salary is allowed for special fitness, special duties, or under extraordinary circumstances.

Whenever a higher salary is allowed, the minutes of the board shall show what salary is allowed and the reason for the same: Provided, that a county board of education, upon the recommendation of the committee of a district, may authorize the committee and the superintendent to supplement the salaries of all teachers of the district from funds derived from taxes within such district, and the minutes of the board shall show what increase is allowed each teacher in each such district. Provided, further, that when one or more local tax districts have been combined to create an administrative district, the county board of education may supplement the salaries of all teachers of each local tax district from funds derived from taxes collected within such local tax district, and the minutes of the board shall show what increase is allowed each teacher in each such district. (1955, c. 1372, art. 5, s. 32; 1965, c. 584, s. 3.)

Editor's Note.—The 1965 amendment added the proviso at the end of the section.

§ 115-50. Authority for salary vouchers.—The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms furnished by the State Board of Education and containing all information required by the controller of the State Board of Education. This monthly payroll shall be signed by the principal of each school. (1955, c. 1372, art. 5, s. 33; 1965, c. 584, s. 4.)

Editor's Note.—The 1965 amendment rewrote the second sentence.

§ 115-51. School food services provided by county and city boards of education.—As a part of the function of the public school system, county and city boards of education may, in their discretion, provide school food services in the schools under their jurisdiction. All school food services made available under this authority shall be provided in accordance with standards and regulations recommended by the State Superintendent of Public Instruction and approved by the State Board of Education.

All school food services shall be operated on a nonprofit basis and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children, and for no other purpose. The term, "cost of operation," shall be defined as actual costs incurred in the purchase and preparation of food, the salaries of personnel directly engaged in preparing and serving food, and the costs of such inexpensive and expendable nonfood supplies as outlined under standards adopted by the State Board of Education. Any costs incurred in the provision and the maintenance of school food services over and beyond the "costs of operation" as defined in this section shall be included in the budget request filed annually by county and city boards of education with boards of county commissioners. It shall not be mandatory that the provisions of G.S. 115-52 and 143-129 be complied with in the purchase of supplies and food for such school food services. (1955, c. 1372, art. 5, s. 34; 1965, c. 912.)

Editor's Note. — The 1965 amendment rewrote this section.

§ 115-52. Purchase of equipment and supplies.—It shall be the duty of county and city boards of education to purchase or exchange all supplies, equipment and materials in accordance with contracts made by or with the ap-

proval of the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the county or city board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any county or city administrative unit for purchases unless provision has been made in the budget of such unit to provide payment therefor, or unless surplus funds are on hand to pay for same, and in order to protect the State purchase contracts, it is hereby made the mandatory duty upon the part of the governing authorities of such local units to pay for such purchases promptly in accordance with the terms of the contract of purchase. (1955, c. 1372, art. 5, s. 35; 1965, c. 840.)

Editor's Note. — The 1965 amendment inserted "or exchange" in the first sentence and substituted "Department of Administration" for "State Division of Purchase and Contract" in that sentence.

§ 115-53. Liability insurance and waiver of immunity as to torts of agents, etc.—Any county or city board of education, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent or employee of such board of education when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort.

Any contract of insurance purchased pursuant to this section must be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State and must by its terms adequately insure the county or city board of education against any and all liability for any damages by reason of death or injury to person or property proximately caused by the negligent acts or torts of the agents and employees of said board of education or the agents and employees of a particular school in a county or city administrative unit when acting within the scope of their authority or within the course of their employment. Any company or corporation which enters into a contract of insurance as above described with a county or city board of education, by such act waives any defense based upon the governmental immunity of such county or city board of education.

Every county or city board of education in this State is authorized and empowered to pay as a necessary expense the lawful premiums for such insurance.

Any person sustaining damages, or in case of death, his personal representative may sue a county or city board of education insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in the county of such board of education; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of a governmental, municipal or discretionary function of such county or city board of education if, and to the extent, such county or city board of education has insurance coverage as provided by this section.

Except as hereinbefore expressly provided, nothing in this section shall be construed to deprive any county or city board of education of any defense whatsoever to any such action for damages, or to restrict, limit, or otherwise affect any such defense which said board of education may have at common law or by virtue of any statute; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to said county or city board of education or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

A county or city board of education may incur liability pursuant to this section only with respect to a claim arising after such board of education has procured

liability insurance pursuant to this section and during the time when such insurance is in force.

No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law with respect thereto unless the defendant shall request a jury trial thereon: Provided, that this section shall not apply to claims for damages caused by the negligent acts or torts of public school bus, or school transportation service vehicle drivers, while driving school buses and school transportation service vehicles when the operation of such school buses and service vehicles is paid from the State nine months' school fund.

The several county and city boards of education in the State are hereby authorized and empowered to take title to school buses purchased with local or community funds for the purpose of transporting pupils to and from athletic events and for other local school activity purposes, and commonly referred to as activity buses. The provisions of this section shall be fully applicable to the ownership and operation of such activity school buses. (1955, c. 1256; 1957, c. 685; 1959, c. 573, s. 2; 1961, c. 1102, s. 4.)

Editor's Note.—

The 1961 amendment inserted in the proviso at the end of the next to the last paragraph the reference to school transportation service vehicles.

This section, in its nature, is not retroactive. *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

Waiver of Tort Immunity Depends on Action of Board.—The legislature has not waived immunity from tort liability as to county and city boards of education, except as to such liability as may be established under the Tort Claims Act, but has left the waiver of immunity from liability for torts to the respective boards, and then only to the extent such board has obtained liability insurance to cover negligence or torts. *Fields v. Durham City Board of Education*, 251 N. C. 699, 111 S. E. (2d) 910 (1960).

Without Waiver Liability Limited to Tort Claims Act.—A county board of education, unless it has duly waived immunity from tort liability, as authorized in this section, is not liable in a tort action or pro-

ceeding involving a tort except such liability as may be established under the Tort Claims Act. *Huff v. Northhampton County Board of Education*, 259 N. C. 75, 130 S. E. (2d) 26 (1963).

Procurement of Insurance Must Be Alleged by Plaintiff.—In the absence of an allegation in the complaint in a tort action against a city board of education, to the effect that such board has waived its immunity by the procurement of liability insurance to cover such alleged negligence or tort, or that such board has waived its immunity as authorized in this section, such complaint does not state a cause of action. *Fields v. Durham City Board of Education*, 251 N. C. 699, 111 S. E. (2d) 910 (1960).

Applied in *Dezern v. Asheboro City Bd. of Educ.*, 260 N.C. 535, 133 S.E.2d 204 (1963).

Cited in *Branch Banking & Trust Co. v. Wilson County Board of Education*, 251 N. C. 603, 111 S. E. (2d) 844 (1960); *McBride v. North Carolina State Board of Education*, 257 N. C. 152, 125 S. E. (2d) 393 (1962).

ARTICLE 6.

Powers and Duties of Superintendents.

§ 115-54. Residence, oath of office, and salary of superintendent.

Cited in *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

§ 115-55. Vacancies in office of superintendent.

Cited in *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

§ 115-56. Duties of superintendent as secretary to board of education.

Stated in *Johnson v. Gray*, 263 N.C. 507, 139 S.E.2d 551 (1965). of Education, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

Cited in *Turner v. Gastonia City Board*

§ 115-58. Duties with respect to election of principals, teachers and other personnel.—It shall be the duty of the county superintendent to approve, in his discretion, the election of all teachers and personnel by the several school committees of the administrative unit. He shall then present the names of all principals, teachers and other school personnel to the county board of education for approval or disapproval, and he shall record in the minutes the action of the board in this matter. Provided, that in county administrative units which elect to operate as one school district without a school committee it shall be the duty of the county superintendent to recommend and the board of education to elect all principals, teachers, and other school personnel in the county administrative unit.

It shall be the duty of the city superintendent to record in the minutes the action of the city board of education in the election of all principals, teachers and other school personnel elected upon the recommendation of the superintendent. (1955, c. 1372, art. 6, s. 5; 1965, c. 584, s. 5.)

Editor's Note.—The 1965 amendment added the proviso at the end of the first paragraph.

§ 115-59. Superintendent to prepare organization statement and request for teachers.—On or before the twentieth day of May in each year, the superintendent of each administrative unit shall present to the State Board of Education a statement, certified by the chairman of the board of education and the superintendent, showing the organization of the schools in his unit, together with such other information as said Board may require. On the basis of such organization statement, together with all other available information, and under such rules and regulations as the State Board of Education may promulgate, said Board shall determine for each administrative unit, the number of elementary and high school teachers to be included in the State budget on the basis of the average daily attendance for the preceding year. The highest average daily attendance for a continuous six months' period of the first seven months of the preceding school year, together with other pertinent attendance data, shall be used as a basis for such allotment: Provided, that loss in attendance due to epidemics shall be taken into consideration in the initial allotment of teachers: Provided further, that the superintendent of an administrative unit shall not be included in the number of teachers and principals allotted on the basis of average daily attendance.

It shall be the duty of the superintendent and the board of education of each administrative unit, after the opening of the schools in said unit, to make a careful check of the school organization and to request the State Board of Education to make changes in the allocation of teachers to meet changed requirements of the said unit. (1955, ch. 1372, art. 6, s. 6; 1963, c. 688, s. 3; 1965, c. 584, s. 6.)

Editor's Note. — The 1963 amendment inserted "together with other pertinent attendance data" in the last sentence of the first paragraph.

The 1965 amendment deleted "by dis-

tricts" following "administrative unit" in the second sentence.

Cited in *Fremont City Board of Education v. Wayne County Board of Education*, 259 N. C. 280, 130 S. E. (2d) 408 (1963).

§ 115-61. County superintendents shall keep record of local taxes.—County superintendents shall keep a separate financial record of each special tax-

ing district in the county and no part of any funds belonging to one district shall be used for any other district, or for any other purpose than to meet the lawful expenses of such district to which the funds collected belong. (1955, c. 1372, art. 6, s. 8; 1965, c. 584, s. 7.)

Editor's Note.—The 1965 amendment deleted the former second sentence, relating to the signing of vouchers.

ARTICLE 7.

School Committees—Their Duties and Powers.

§ 115-69. Eligibility and oath of office.

Editor's Note.—Section 19, c. 705, Session Laws 1965, provides that this article shall not apply to Richmond County.

§ 115-70. Appointment; number of members; terms; vacancies; advisory council.—At the first regular meeting during the month of April, 1965, or as soon thereafter as practicable, and biennially thereafter, the county board of education named by the General Assembly which convened in February of such year or elected at the preceding general election, as the case may be, shall elect and appoint school committees for each of the several districts in their counties, consisting of not less than three, nor more than five persons, for each school district, whose term of office shall be for two years: Provided, that in county school administrative units organized as one district, the county board of education need not appoint a district school committee, in which case the county board of education shall assume the duties of the district school committee or may authorize an advisory council, or councils, to assume such duties as it may legally delegate to them. In the event of death, resignation or removal from the district of any member of said school committee, the county board of education shall be empowered to select and appoint his or her successor to serve the remainder of the term; provided, that in units desiring the same, by action of the county board of education, one-third of the members may be selected for a term of one year, one-third of the members for a term of two years, and one-third of the members for a term of three years, and thereafter all members for a term of three years from the expiration of said terms. This section shall not have the effect of repealing any local or special acts relating to the appointment or terms of office of school committees.

A county board of education may appoint an advisory council for any school or schools within the administrative unit. The purpose and function of an advisory council shall be to serve in an advisory capacity to the board on matters affecting the school or schools for which it is appointed. The organization, terms, composition and regulations for the operation of such advisory council shall be determined by the board. (1955, c. 1372, art. 7, s. 2; 1957, c. 686, s. 2; 1965, c. 584, s. 8.)

Local Modification.—Edgecombe: 1961, c. 65; Jackson: 1963, c. 228.

Session Laws 1961, c. 205, as amended by Session Laws 1963, c. 239, relating to school committees and increasing the number of members from five to nine, applies only to Alamance, Caswell, Columbus, Duplin, Hoke, Madison, Onslow, Orange, Rutherford and Sampson.

Editor's Note.—

The 1965 amendment changed the date in the first sentence from 1957 to 1965, added the proviso at the end of that sentence and rewrote the last paragraph.

The law does not give a committee cor-

porate status; neither does it authorize a committee to sue or defend. *Revels v. Oxendine*, 263 N.C. 510, 139 S.E.2d 737 (1965).

Committees are not given final authority. Their acts are under, subordinate to, and controlled by, the county or city boards. *Revels v. Oxendine*, 263 N. C. 510, 139 S.E.2d 737 (1965).

Or the Right to Sue.—School committees are not given the right to sue. That right does not arise by necessary implication from any duties assigned to them. *Revels v. Oxendine*, 263 N.C. 510, 139 S.E.2d 737 (1965).

§ 115-72. How to employ principals, teachers, janitors and maids.
 —The district committee, upon the recommendation of the county superintendent of schools, shall elect the principals for the schools of the district, subject to the approval of the county board of education. The principal of each school shall nominate and the district committee shall elect the teachers for all the schools of the district, subject to the approval of the county superintendent of schools and the county board of education. Likewise, upon the recommendation of the principal of each school of the district, the district committee shall appoint janitors and maids for the schools of the district, subject to the approval of the county superintendent of schools and the county board of education. No election of a principal or teacher, or appointment of a janitor or maid, shall be deemed valid until such election or appointment has been approved by the county superintendent and the county board of education. No teacher under eighteen years of age may be employed, and the election of all teachers and principals and the appointment of all janitors and maids shall be done at regular or called meetings of the committee.

In the event the district committee and the county superintendent are unable to agree upon the nomination and election of a principal or the principal and the district committee are unable to agree upon the nomination and election of teachers or appointment of janitors or maids, the county board of education shall select the principal and teachers and appoint janitors and maids, which selection and appointment shall be final.

The distribution of the teachers and janitors among the several schools of the district shall be subject to the approval of the county board of education. (1955, c. 1372, art. 7, s. 4; 1965, c. 584, s. 9.)

Editor's Note.—The 1965 amendment substituted "each school" for "the district" near the beginning of the second sentence.

SUBCHAPTER III. SCHOOL DISTRICT ORGANIZATION.

ARTICLE 8.

Creating and Consolidating School Districts.

§ 115-74. Creation and modification of school districts by State Board of Education.

Quoted in *Peacock v. County of Scotland*, 262 N.C. 199, 136 S.E.2d 612 (1964).

SUBCHAPTER IV. REVENUE FOR THE PUBLIC SCHOOLS.

ARTICLE 9.

County and City Boards of Education and Budgets.

§ 115-78. Objects of expenditure for operation of public schools.

(b) The current expense fund shall include:

- (1) General Control.—Salaries and travel of superintendent, assistant superintendent, business manager, and attendance counselor; salaries of clerical assistants, property cost clerks, and the treasurer, including cost of his bond; per diem and travel of board of education; office expenses, cost of audit, elections and attorneys' fees and other necessary expenses of general control.
- (2) Instructional Service.—Salaries of elementary and high school teachers and principals; salaries, travel, and office expense of supervisors; salaries and travel of teachers of vocational education including agriculture, home economics, trades and industries and distributive edu-

cation; clerical and travel expenses of principals; commencement expenses; and instructional supplies.

- (3) Operation of Plant.—Wages of janitors, cost of fuel, water, light, power, janitors' supplies, and telephones in school buildings.
 - (4) Maintenance of Plant.—Cost of repairs to buildings and grounds, including salary of the superintendent of grounds, and teacherages; repairs and replacements of furniture and instructional apparatus, and repairs and replacements of heating, electrical and plumbing equipment.
 - (5) Fixed Charges.—Cost of rents, insurance on buildings and equipment, workmen's compensation, compensation to injured employees, payment for injuries to school children, retirement paid to the State and paid to employees, and tort claims.
 - (6) Auxiliary Agencies.—Cost of transportation, including wages of drivers, gas, oil and grease; gas storage and equipment; salaries of mechanics, repair parts and batteries; tires and tubes; insurance, license and title fees; garage equipment, contract transportation, major replacements of chassis and bodies, and bus travel of principals; cost of operation and maintenance of school libraries; replacement and rental of textbooks including salaries of clerical assistants; health, including clinics and recreation; aid to indigent pupils; night schools; summer schools; adult education; lunchrooms; veterans' training; and interest on temporary loans.
- (1963, c. 1223, s. 3.)

Editor's Note.—

The 1963 amendment substituted "counselor" for "officer" near the begin-

ning of subdivision (1) of subsection (b). Only subsection (b) is set out.

§ 115-79. Objects of expenditure included in State budget.—The appropriation of State funds, as provided by law, shall be used for meeting the cost of the operation of the public schools as determined by the State Board of Education, for the following items:

- (1) General control:
 - a. Salary of superintendent.
 - b. Travel of superintendent.
 - c. Salaries of clerical assistants.
 - d. Salaries of property and cost clerks.
 - e. Office expenses.
 - f. Per diem and travel of county board of education.
 - g. Salaries of attendance counselors.
- (2) Instructional service:
 - a. Salaries of elementary and high school teachers.
 - b. Salaries of elementary and high school principals.
 - c. Salaries of supervisors.
 - d. Instructional supplies.
- (3) Operation of plant:
 - a. Wages of janitors.
 - b. Fuel.
 - c. Water, light, and power.
 - d. Janitor's supplies.
 - e. Telephones.
- (4) Fixed charges, compensation:
 - a. School employees.
 - b. Injuries to school pupils.
 - c. Tort claims.
- (5) Auxiliary agencies:
 - a. Transportation of pupils:
 1. Wages of bus drivers.

2. Gas, oil and grease.
 3. Gas storage equipment.
 4. Salaries of mechanics.
 5. Repair parts and batteries.
 6. Tires and tubes.
 7. License and title fees.
 8. Garage equipment.
 9. Contract transportation.
 10. Major replacements of chassis and bodies.
 11. Principals' bus travel.
- b. Libraries: Supplies, repairs and replacements.
- c. Child health program.

In making provision from State funds, the State Board of Education shall effect all economies possible in providing for all objects and items of expenditure except items of salary, and after such economies in all nonsalary items, the Board shall have authority to increase or decrease on a uniform percentage basis, the salary schedule of all personnel employed in order that the appropriation of State funds for the public schools may insure their operation for the full length of the term. (1955, c. 1372, art. 9, s. 2; 1963, c. 1223, s. 4.)

Editor's Note.—The 1963 amendment added paragraph g to subdivision (1).

§ 115-80. Rules for preparation of school budgets.

(b) Supplemental Tax Budget.—In cases where administrative units or districts have voted, or may hereafter vote, a tax in order to operate schools of a higher standard than that provided by State support, county and city boards of education, at the same time the other budgets are filed, shall file a supplemental budget therefor and request that a sufficient levy be made by the tax levying authorities, not in excess of the rate voted by the people in such unit or district. The tax levying authorities may approve or disapprove this supplemental budget in whole or in part, and shall levy such taxes as necessary to provide for the approved budget for supplemental purposes, not exceeding the amount of the tax levy authorized by the vote of the people. The expenditure of the proceeds of said levy shall be in accordance with the aforesaid supplemental budget as approved by the tax levying authorities, except where such levy is voted in a district, in which case the written consent of the chairman of the district committee shall also be obtained before any of said proceeds are expended except in administrative districts: Provided, that the tax levying authorities may fix a charge against any administrative unit or district for collection of such levies not exceeding one per cent (1%) thereof.

(e) The board of education of any county or city administrative unit may include funds derived from local sources in its local operating budget for the purpose of establishing and maintaining summer schools. Such summer schools as may be established shall be administered by county and city boards of education and shall be conducted in accordance with standards developed by the State Superintendent of Public Instruction and approved by the State Board of Education. The standards so developed shall specify the requirements for an approved curriculum, the qualifications of the personnel, the length of the session, and the conditions under which students may be granted credit for courses pursued during a summer school. In determining the eligibility of students for admission to summer schools, boards of education shall be governed by the provisions of article 21 of this chapter. (1955, c. 1372, art. 9, s. 3; 1961, c. 894, s. 1; 1965, c. 584, s. 10.)

Editor's Note.—The 1961 amendment added subsection (e) at the end of this section.

in administrative districts" immediately preceding the proviso at the end of subsection (b).

The 1965 amendment inserted "except As the other subsections were not af-

fectured by the amendments, they are not set out.

Applied in *Whiteville City Administrative Unit v. Columbus County Board of*

County Com'rs, 251 N. C. 826, 112 S. E. (2d) 539 (1960); *Peacock v. County of Scotland*, 262 N.C. 199, 136 S.E.2d 612 (1964).

§ 115-86. Apportionment of local funds among administrative units.—All county-wide current expense funds shall be apportioned to the administrative units of a county on a per capita enrollment basis which shall be determined by the State Board of Education and certified to each administrative unit.

County-wide capital outlay funds for the cost of new school sites, or addition to present school sites, new school buildings, new additional construction at existing buildings and equipment for such new buildings and for new additional construction shall be apportioned to the administrative units of a county on the basis of budgets approved by the board of county commissioners for each administrative unit and for the amounts and purposes approved by said board of commissioners. All other capital outlay school funds shall be apportioned to the administrative units of a county on the same per capita enrollment basis used for apportionment of current expense funds.

Upon the basis of a budget approval and upon receiving the certificate of per capita enrollment, the county auditor or accountant shall determine the proportion of all county-wide tax and nontax revenue and other funds accruing to the current expense, and capital outlay funds, which is apportionable to the county and city administrative units within a county. The proportion thereof allocable to each administrative unit in said county shall be set up to the credit of such administrative unit by the county auditor or accountant.

On the basis of such apportionment, it shall be the duty of the county treasurer, or other county official performing such duties, to remit all of such funds for current expense and capital outlay as they are collected promptly at the end of each month to each administrative unit within the county.

In the event that a greater amount is collected and paid to any administrative unit than is authorized to be spent in its approved budget for current expense, and capital outlay funds, the same shall remain an unencumbered balance to be credited to those funds in the following fiscal year, and shall not be spent, committed, or obligated, unless a supplemental budget is first approved by the board of education and the board of county commissioners.

Collections of all taxes and other revenues accruing to a debt service fund shall be deposited promptly to the credit of such fund in the manner provided by law. Apportionments to local districts contained in the budget for the county debt service fund shall be paid and credited to the debt service funds of the local districts in such manner as may be practicable so as to provide for prompt payment of items of principal and interest therein, as the same fall due.

Funds derived from payments on insurance losses shall be used in the repair or replacement of buildings damaged or destroyed or, in the event the buildings are not replaced, shall be used to reduce the school indebtedness of the county or of the local district to which said payment has been made, or for other capital outlay purposes within said county or local district. (1955, c. 1372, art. 9, s. 9; 1959, c. 915, s. 3; 1961, c. 1199; 1963, c. 448, s. 24.)

Editor's Note.—

The 1961 amendment added the last sentence of the second paragraph.

The 1963 amendment, effective July 1,

1963, deleted at the end of the first and second paragraphs provisions relating to industrial education centers.

§ 115-87. Procedure in cases of disagreement or refusal of tax levying authorities to levy taxes.

For history leading to enactment of this section, see *Whiteville City Administrative Unit v. Columbus County Board of*

County Com'rs, 251 N. C. 826, 112 S. E. (2d) 539 (1960).

Controversy Must Be Resolved Prior to

Provision of Funds.—When disagreement arises, the county commissioners cannot be required to provide funds beyond their estimate of needs until the controversy has been resolved in the manner provided

by statute. *Whiteville City Administrative Unit v. Columbus County Board of County Com'rs*, 251 N. C. 826, 112 S. E. (2d) 539 (1960).

§ 115-88. Jury trial as to amount needed to maintain schools.

For history leading to enactment of this section, see *Whiteville City Administrative Unit v. Columbus County Board of*

Com'rs 251 N. C. 826, 112 S. E. (2d) 539 (1960).

§ 115-90. How school funds are paid out.

- (2) County, City, and District School Funds.—All county, city, and district school funds, from whatever source provided, shall be paid out only on warrants signed by the chairman and the secretary of the county board of education for county units and the chairman and the secretary of the city board of education for city administrative units. In county administrative units such warrants shall be countersigned by such officer as the county government laws may require, or by some other officer or employee of the county, or of the county board of education, designated from time to time by the board of county commissioners with the approval of the county board of education, and in city administrative units such warrants shall be countersigned by the treasurer of the administrative unit: Provided, the countersigning officer shall countersign warrants drawn as herein specified when such warrants are within the funds set up to the credit of, and are within the budget amounts appropriated for the particular administrative unit, and further, when each warrant is accompanied by an invoice, statement, voucher or other basic document which, upon examination by the countersigning officer, satisfies such countersigning officer that issuance of such warrant is proper: Provided, further, that in county units before the chairman and secretary of the board of education shall draw a voucher on funds belonging to a local tax district, they shall have an order signed by the chairman of the committee of such district authorizing the expenditure of such funds, except in the case of administrative districts. All vouchers which are chargeable against district funds shall specify the district against which they are charged.

(1965, c. 488, s. 1; c. 584, s. 11.)

Local Modification. — Duplin County: 1965, c. 961, s. 1.

Editor's Note.—

The first 1965 amendment inserted, near the beginning of the second sentence of subdivision (2), "or by some other officer or employee of the county, or of the county board of education, designated from time to time by the board of county commissioners with the approval of the county board of education."

The second 1965 amendment added the present last sentence in subdivision (2) and added "except in the case of administrative districts" at the end of the present next to the last sentence.

As the rest of the section was not changed by the amendments, only subdivision (2) is set out.

ARTICLE 10.

The Treasurer: His Powers, Duties and Responsibilities in Disbursing School Funds.

§ 115-93. Annual reports of treasurer.

Discretionary Power Not Given to Superintendent. — The Supreme Court does

not construe this section as giving to the State Superintendent of Public Instruction

any discretionary power in connection with ascertaining the average current expense expenditures per student from local funds throughout the State. It is a matter of tabulating and certifying to the local units

the facts as found from the reports submitted to him by the local units. *Peacock v. County of Scotland*, 262 N.C. 199, 136 S.E.2d 612 (1964).

§ 115-99. Unclaimed fees of jurors and witnesses paid to school fund.

Cross Reference.—For section providing for like disposition of such unclaimed fees after three years, see § 2-50.

SUBCHAPTER V. SPECIAL LOCAL TAX ELECTIONS FOR SCHOOL PURPOSES.

ARTICLE 14.

School Areas Authorized to Vote Local Taxes.

§ 115-116. Purposes for which elections may be called.—(a) To Vote a Supplemental Tax.—Elections may be called to ascertain the will of the voters as to whether there shall be levied and collected a special tax in the several administrative units, districts, and other school areas, including districts formed from contiguous counties, to supplement the current expense funds from State and county allotments and hereby operate schools of a higher standard by supplementing any item of expenditure in the school budget. When supplementary funds are authorized by the carrying of such an election, such funds may be used to employ additional teachers, other than those allotted by the State, to teach any grades or subjects or for kindergarten instruction, to establish and maintain approved summer schools, and for making the contribution to the Teachers' and State Employees' Retirement System of North Carolina for such teachers, or for any object of expenditure: Provided, that elections may be called to ascertain the will of the voters of an entire county, as to whether there shall be levied and collected a special tax on all the taxable property within the county for the purposes enumerated in this subsection. In such event, the supplemental tax shall be apportioned among the administrative units of the county on a per capita enrollment basis which shall be determined by the State Board of Education and certified to each administrative unit involved.

(h) To Annex or Consolidate Areas or Districts from Contiguous Counties and to Provide a Supplemental School Tax in Such Annexed Areas or Consolidated Districts.—An election may be called in any district or districts or other school area or areas, from contiguous counties, as to whether the district or districts, in one county shall be enlarged by annexing or consolidating therewith any adjoining district or districts, or other school area or areas from an adjoining county, and if a special or supplemental school tax is levied and collected in the district or districts of the county to which the territory is to be annexed or consolidated, whether upon such annexation or consolidation there shall be levied and collected in the territory to be annexed or consolidated the same special or supplemental tax for schools as is levied and collected in the district or districts in the other county. If such election carries, the said special or supplemental tax shall be levied and collected by the county wherein such territory lies and remitted to the county school fund of the county already levying and collecting such special or supplemental tax; provided, that notwithstanding the provisions of G. S. 115-12.1, if the notice of election clearly so states, and the election shall be held prior to August 1, the annexation or consolidation shall be effective and the tax so authorized shall be levied and collected beginning with the fiscal year commencing July 1 next preceding such election. (1955, c. 1372,

art. 14, s. 1; 1957, c. 1066; c. 1271, s. 1; 1959, c. 573, s. 9; 1961, c. 894, s. 2; c. 1019, s. 1.)

Editor's Note.—

The first 1961 amendment inserted the words "to establish and maintain approved summer schools" after the word "instruc-

tion" in line ten of subsection (a). The second 1961 amendment added subsection (h). Only subsections (a) and (h) are set out.

§ 115-118. Who may petition for election.—County and city boards of education may petition the board of county commissioners for an election in their respective administrative units or for any school area or areas therein.

In county administrative units, for any of the purposes enumerated in G. S. 115-116, the school committee of a district, or a majority of the committees in area including a number of districts, or a majority of the qualified voters who have resided for the preceding twelve months in a school area less than a district, and which area is adjacent to a city unit or a district to which it is desired to be annexed and which can be included in a common boundary with said unit or district, or the committee of a district formed from portions of two or more contiguous counties, may petition the county board of education for an election.

The school committee of a district, or the majority of the committees in an area including a number of districts, or a majority of the qualified voters who have resided for the preceding twelve months in a school area less than a district, and which area, district, districts or territory is adjacent to a district or districts in a contiguous county to which it is desired to be annexed or consolidated, and with the approval of the county board of education of the contiguous county to which it is desired to be annexed or consolidated, may petition the county board of education for an election. (1955, c. 1372, art. 14, s. 3; 1961, c. 1019, s. 2.)

Editor's Note.—The 1961 amendment added the last paragraph.

§ 115-124. Levy and collection of taxes.—In cases where administrative units or districts have voted, or may hereafter vote, a tax in order to operate schools of a higher standard than that provided by State support, county and city boards of education, at the same time the other budgets are filed, shall file a supplemental budget therefor and request that a sufficient levy be made by the tax levying authorities, not in excess of the rate voted by the people in such unit or district. The tax levying authorities may approve or disapprove this supplemental budget in whole or in part, and shall levy such taxes as necessary to provide for the approved budget for supplemental purposes, not exceeding the amount of the tax levy authorized by the vote of the people. The expenditure of the proceeds of said levy shall be in accordance with the aforesaid supplemental budget as approved by the tax levying authorities: Provided, that the tax levying authorities may fix a charge against any administrative unit or district for collection of such levies not exceeding one per cent (1%) thereof. The superintendent of schools, the county accountant or auditor, the officer in charge of tax records, and the county treasurer shall keep records in their respective offices, showing the valuation of all property in the unit, district, or area; the rate of tax authorized annually to be levied, and the amount annually derived from the local tax. It shall be illegal for any part of the local tax fund to be used for any purpose other than those purposes authorized by the election in the unit, or district. (1955, c. 1372, art. 14, s. 9; 1965, c. 584, s. 12.)

Editor's Note.—The 1965 amendment eliminated an exception immediately preceding the proviso in the third sentence.

SUBCHAPTER VI. SCHOOL PROPERTY.

ARTICLE 15.

*School Sites and Property.***§ 115-125. Acquisition of sites.**

Stated in State Highway Comm'n v. Greensboro City Bd. of Educ., 265 N.C. 35, 143 S.E.2d 87 (1965).

§ 115-126. Sale, exchange or lease of school property; easements and rights of way.

(f) In addition to the foregoing, county and city boards of education are hereby authorized and empowered, in their sound discretion, to grant easements to any public utility, municipality or quasi-municipal corporation to furnish utility services to school property, with or without compensation except the benefits accruing by virtue of the location of the said public utility, and to dedicate portions of any lands owned by such boards as rights of way for public streets, roads or sidewalks, with or without compensation except the benefits accruing by virtue of the location or improvement of such public streets, roads or sidewalks. (1955, c. 1372, art. 15, s. 2; 1959, c. 324; c. 573, s. 11; 1961, c. 395.)

Local Modification. — Craven: 1965, c. 143; Greene: 1965, c. 784; Nash: 1963, c. 1038; 1965, c. 731. tion (f). As only this subsection was changed the rest of the section is not set out.

Editor's Note.—

The 1961 amendment rewrote subsection

§ 115-133. Duties of boards of education to keep buildings in repair and determine use of school property.—It shall be the duty of county and city boards of education and tax levying authorities, in order to safeguard the investment made in public schools, to keep all school buildings in good repair to the end that all public school property shall be taken care of and be at all times in proper condition for use. It shall be the duty of all committeemen, principals, teachers, and janitors to report to their respective boards of education immediately any unsanitary condition, damage to school property, or needed repair. All principals, teachers, and janitors shall be held responsible for the safekeeping of the buildings during the school session and all breakage and damage shall be repaired by those responsible for same, and where any principal or teacher shall permit damage to the public school buildings by lack of proper discipline of pupils, such principal or teacher shall be held responsible for such damage: Provided, principals and teachers shall not be held responsible for damage that they could not have prevented by reasonable supervision in the performance of their duties.

Notwithstanding the provisions of G. S. 115-51, county and city boards of education shall have authority to adopt rules and regulations by which school buildings, including cafeterias and lunchrooms, may be used for other than school purposes so long as such use is consistent with the proper preservation and care of the public school property. No liability shall attach to any board of education, individually or collectively, for personal injury suffered by reason of the use of such school property. (1955, c. 1372, art. 15, s. 9; 1957, c. 684; 1963, c. 253.)

Editor's Note.—

The 1963 amendment rewrote the second paragraph.

SUBCHAPTER VII. EMPLOYEES.

ARTICLE 17.

Principals' and Teachers' Employment and Contracts.

§ 115-142. Contracts of principals and teachers terminated at end of 1954-1955 term; employment thereafter.

Stated in *Johnson v. Gray*, 263 N.C. 507,
139 S.E.2d 551 (1965).

§ 115-145. Removal of principals and teachers; revocation of certificate.—The county and city boards of education and district committees, with the approval of the superintendent, may dismiss a principal or teacher for immoral or disreputable conduct or for failure to comply with the provisions of the contract. The superintendent of schools, with the approval of the committee or the board of education, has authority and it is his duty to dismiss a principal or teacher who has proven himself incompetent, or who wilfully refuses to discharge the duties of a public school principal or teacher, or who may be persistently neglectful of such duties. However, no principal or teacher shall be dismissed until charges have been filed in writing in the office of the superintendent and such principal or teacher given at least five days' notice in which time he shall have the opportunity to appear before the board of education or the district committee before whom the matter is being investigated. After a full and fair hearing the action of the board of education or the committee shall be final: Provided, the principal or teacher shall have the right to appeal to the county board of education if the action was taken by a district committee, and thereafter to the courts, or directly to the courts if the action was taken by a county or city board of education.

In all cases where principals, teachers, and other certificated personnel have been dismissed by boards of education for immoral or disreputable conduct or have been convicted of a crime involving moral turpitude, the superintendent of schools shall notify, within thirty days of such dismissal or conviction, the State Superintendent of Public Instruction who shall have authority to revoke such principal's or teacher's certificate, if he deems such action justifiable. Persons whose certificates have been revoked by another state for immoral or disreputable conduct shall not be certificated in North Carolina and it shall be the duty of the State Superintendent of Public Instruction to notify all other states of any certificates which he shall revoke. (1955, c. 1372, art. 17, s. 3; 1965, c. 584, s. 13.)

Editor's Note.—The 1965 amendment rewrote the second paragraph.

§ 115-147. Power to suspend or dismiss pupils.—The principal of a school shall have authority to suspend or dismiss any pupil who wilfully and persistently violates the rules of the school or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school: Provided, any suspension or dismissal in excess of ten school days and any suspension or dismissal denying a pupil the right to attend school during the last ten school days of the school year shall be subject to the approval of the county or city superintendent. Every suspension or dismissal for cause shall be reported at once to the superintendent and to the attendance counselor, who shall investigate the cause and deal with the offender in accordance with rules governing the attendance of children in school. (1955, c. 1372, art. 17, s. 5; 1959, c. 573, s. 12; 1963, c. 1223, s. 5; 1965, c. 584, s. 14.)

Editor's Note.—

The 1963 amendment substituted the word "counselor" for the word "officer" in the last sentence.

The 1965 amendment substituted "The principal of a school" for "A district principal, or a building principal" at the beginning of the section.

§ 115-148. Duty to make reports to superintendent; making false reports or records.

Principal's Duty to Keep Superintendent and Board Informed.—It is the duty of the principal to keep the superintendent and, through the superintendent, the board of education informed about all phases of school operations. *Johnson v. Gray*, 263 N.C. 507, 139 S.E.2d 551 (1965).

Reports Qualifiedly Privileged.—The reports a principal makes in the performance of his duties are qualifiedly privileged. *Johnson v. Gray*, 263 N.C. 507, 139 S.E.2d 551 (1965).

§ 115-150. Authority and duty of principal generally.—The principal shall have authority to grade and classify pupils and exercise discipline over the pupils of the school. The principal shall make all reports to the county or city superintendent and give suggestions to teachers for the improvement of instruction. It shall be the duty of each teacher in a school to cooperate with the principal in every way possible to promote good teaching in the school and a progressive community spirit among its patrons.

It shall be the duty of the principal to conduct a fire drill during the first week after the opening of school and thereafter at least one fire drill each school month, in each building in his charge, where children are assembled. Fire drills shall include all pupils and school employees, and the use of various ways of egress to simulate evacuation of said buildings under various conditions, and such other regulations as shall be prescribed for fire safety by the Insurance Commissioner, the Superintendent of Public Instruction and the State Board of Education. A copy of such regulations shall be kept posted on the bulletin board in each building.

It shall be the duty of each principal to inspect each of the buildings in his charge at least twice each month during the regular school session. This inspection shall include cafeterias, gymnasiums, boiler rooms, storage rooms, auditoriums and stage area as well as all class rooms. This inspection shall be for the purpose of keeping the buildings safe from the accumulation of trash and other fire hazards.

It shall be the duty of the principal to file a written report once each month during the regular school session with his local school committee, and two copies of this report with the superintendent of his administrative unit, one copy of which shall be transmitted by the superintendent to the chairman of the county or city board of education. This report shall state the date the last fire drill was held, the time consumed in evacuating each building, that the inspection has been made as prescribed by law and such other information as is deemed necessary for fire safety by the Insurance Commissioner, the Superintendent of Public Instruction and the State Board of Education. (1955, c. 1372, art. 17, s. 8; 1957, c. 843; 1959, c. 573, s. 13; 1965, c. 584, s. 15.)

Editor's Note.—

The 1965 amendment rewrote the first paragraph.

Stated in *Johnson v. Gray*, 263 N.C. 507, 139 S.E.2d 551 (1965).

ARTICLE 18.

Certification and Salaries of Employees; Workmen's Compensation.

§ 115-153. Certifying and regulating the grade and salary of teachers; furnishing to county or city boards available personnel information.—The State Board of Education shall have entire control of certifying all applicants for teaching, supervisory, and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes.

Upon request, the State Board of Education and the State Department of Public Instruction shall furnish to any county or city board of education any and all

available personnel information relating to certification, evaluation and qualification including, but not limited to, semester hours or quarterly hours completed, graduate work, grades, scores, etc., that are on that date in the files of the State Board of Education or Department of Public Instruction. (1955, c. 1372, art. 18, s. 2; 1965, c. 584, s. 20.1.)

Editor's Note.—The 1965 amendment added the second paragraph.

§ 115-153.1. Authority of county and city boards of education to purchase annuity contracts for employees.—Notwithstanding the provisions of this chapter for the adoption of State and local salary schedules for the pay of teachers, principals, superintendents, and other school employees, county and city boards of education may enter into annual contracts with any employee of such board which provide for a reduction in salary below the total established compensation or salary schedule for a term of one (1) year. The county or city board of education shall use the funds derived from the reduction in the salary of the employee to purchase a nonforfeitable annuity contract for the benefit of said employee. An employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity contract. Funds used by the county and city boards of education for the purchase of an annuity contract shall not be in lieu of any amount earned by the employee before his election for a salary reduction has become effective.

The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the State Board of Education and on forms prepared by the State Board of Education.

Notwithstanding any other provisions of this section, the amount by which the salary of any employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes. (1963, c. 582.)

§ 115-157. Pay of school officials and other employees.—Teachers and principals shall be paid promptly when their salaries are due, provided they have been properly elected, have executed their contracts, and deposited a copy of the same with their respective boards of education, and have taught a school month of twenty days, or for a less number of days when their employment is terminating. All such teachers and principals employed by any administrative unit or any school district, who are to be paid from local funds, shall be paid promptly as provided by law and as State allotted teachers and principals are paid.

Public school employees paid from State funds shall be paid as follows:

Salary vouchers for the payment of all State allotted teachers, principals, and others employed for the school term shall be issued each month to such persons as are entitled to same. The salaries of superintendents and others employed on an annual basis shall be paid per calendar month: Provided, that teachers may be paid in twelve equal monthly installments in such administrative units as shall request the same of the State Board of Education on or before October first of each school year. Before such request shall be filed, it shall be approved by the board of education, the superintendent, and a majority of the teachers in said administrative unit. The payment of the annual salary in twelve installments instead of nine shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit; nor shall such payment apply to any teacher who is employed for a period of less than nine months. Classified principals in the public schools of the State shall be employed for a term of ten (10) months and shall be paid on the basis of ten (10) months' service: Provided, that the State Board of

Education may in its discretion and under such rules and regulations as it may prescribe, provide for the payment of the salaries of classified principals and supervisors in twelve equal monthly installments in such administrative units as shall request the same.

The State Board of Education is authorized to prescribe what portion of said extra month shall apply to services rendered before the opening of the school term and after the closing of the school year and to fix and regulate the duties of principals during said extra month.

The State Board of Education may, in its discretion and under such rules and regulations as it may prescribe, provide for the payment of the salaries of regular State allotted teachers in ten (10) equal monthly payments. It shall also provide for the salaries of vocational teachers in such monthly payments as may be desirable and in accordance with rules and regulations prescribed for the operation of the vocational program and in accordance with federal laws and regulations relating to such funds.

In any administrative unit which shall request the same of the State Board of Education on or before August 1 of each school year, teachers may be paid in nine equal payments on the basis of service for nine school months, such payments to be made on the same fixed date in each calendar month during the school term as determined by the county or city board of education: Provided, that the county or city board of education shall sustain any loss by reason of an overpayment to any teacher or principal. Principals shall be paid during the school term on the same date as the teachers are paid.

All of the foregoing provisions of this section shall be subject to the requirements that if the Old Age and Survivors Insurance Program of the Federal Social Security Act is coordinated with the Teachers and State Employees Retirement System pursuant to enactments of the General Assembly of 1955, then and in that event at least fifty dollars (\$50.00) or other minimum amount required by Federal Social Security Laws, of the compensation of every teacher, principal or other school employee covered by the Teachers and State Employees Retirement System or otherwise eligible for Federal Social Security coverage, shall be paid in each of the four quarters of the calendar year. (1955, c. 1372, art. 18, s. 6; 1961, c. 1085.)

Editor's Note.—The 1961 amendment added the proviso beginning in the twenty-fifth line of this section.

§ 115-158. Authority of superintendent to issue salary vouchers.—The authority for a superintendent to issue vouchers for the salary of all school employees, whether paid from State or local funds, shall be a monthly payroll, prepared on forms furnished by the State Board of Education and containing all information required by the controller of the State Board of Education. This monthly payroll shall be signed by the principal of the school. If any voucher so drawn is chargeable against district funds, the amount so charged and the district to which said amount is charged shall be specified on the voucher.

No deductions shall be made from salaries of teachers of vocational agriculture and home economics whose salaries are paid in part from State and federal vocational funds while in attendance upon community, county and State meetings called for the specific purpose of promoting the agricultural interests of North Carolina, when such attendance is approved by the superintendent of the administrative unit and the State Director of Vocational Education. (1955, c. 1372, art. 18, s. 7; 1965, c. 584, s. 16.)

Editor's Note.—The 1965 amendment deleted "in city administrative units, and in county administrative units by the principal and the chairman of the local committee" at the end of the second sentence.

§ 115-159. Cashing vouchers and payment of sums due on death of school employees. — In the event of the death of any superintendent, teacher,

principal, or other school employee, to whom payment is due for or in connection with services rendered by such person or to whom has been issued any uncashed voucher for or in connection with services rendered, when there is no administration upon the estate of such person, such voucher may be cashed by the clerk of the superior court of the county in which such deceased person resided, or a voucher due for such services may be made payable to such clerk, who will treat such sums as a debt owed to the intestate under the provisions of G.S. 28-68. (1955, c. 1372, art. 18, s. 8; 1965, c. 395.)

Editor's Note. — The 1965 amendment rewrote the section.

SUBCHAPTER VIII. PUPILS.

ARTICLE 19.

Census, Admissions and Attendance.

§ 115-161. Continuous school census.

Cited in Fremont City Board of Education v. Wayne County Board of Education, 259 N. C. 280, 130 S. E. (2d) 408 (1963).

§ 115-165. **Children not entitled to attend public schools.**—A child so severely afflicted by mental, emotional, or physical incapacity as to make it impossible for such child to profit by instruction given in the public schools shall not be permitted to attend the public schools of the State. In case such child is presented for enrollment in the public schools, it shall be the duty of the county or city superintendent of schools to make, or cause to be made by qualified psychologists and/or medical authorities, an examination to determine whether said child can profit by attending the public schools. Upon receipt of a report indicating that the child cannot profit from instruction given in the public schools the county or city superintendent of schools is hereby authorized to exclude said child from the public schools. In all such cases in which a child is excluded from schools, a complete record of the transaction shall be filed in the office of the county or city superintendent, the office of the county director of public welfare, and the office of the county health officer, and shall be available to all parties concerned. If the parent or guardian of such a child persists in forcing his attendance after such report has determined that the child should not attend the public schools, he shall be guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court. (1955, c. 1372, art. 19, s. 5; 1961, c. 186; 1965, c. 584, s. 17.)

Editor's Note. — The 1961 amendment substituted "director" for "superintendent" in the first sentence of the former second paragraph. The 1965 amendment rewrote the section.

ARTICLE 20.

General Compulsory Attendance Law.

§ 115-166. **Parent or guardian required to keep child in school; exceptions.**—Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and sixteen years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned and in which he is enrolled shall be in session; provided, this requirement shall not apply with respect to any child when the board of education of the administrative unit in which the child resides finds that:

- (1) Such child is now assigned against the wishes of his parent or guardian, or person standing in loco parentis to such child, to a public school attended by a child of another race and it is not reasonable and prac-

ticable to reassign such child to a public school not attended by a child of another race; and

- (2) It is not reasonable and practicable for such child to attend a private nonsectarian school, as defined in article 35 of this chapter.

The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause which does not constitute unlawful absence as defined by the State Board of Education. The term "school" as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the county or city superintendent of schools or the State Board of Education.

All nonpublic schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term. (1955, c. 1372, art. 20, s. 1; 1956, Ex. Sess., s. 5; 1963, c. 1223, s. 6.)

Editor's Note.—

The 1963 amendment rewrote the last two paragraphs.

Parent Asserting Rights under Vaccination Statute.—Where it appeared that the defendant did everything within his power to keep his child in school, except to waive what he believed to be his rights under § 130-93.1 (h), so long as the defendant, in

good faith, was asserting his rights as he conceived them under the statute, he was not subject to conviction under this section. *State v. Miday*, 263 N.C. 747, 140 S.E.2d 325 (1965).

Cited in *Fremont City Board of Education v. Wayne County Board of Education*, 259 N. C. 280, 130 S. E. (2d) 408 (1963).

§ 115-167. State Board of Education to make rules and regulations; method of enforcement. — It shall be the duty of the State Board of Education to formulate such rules and regulations as may be necessary for the proper enforcement of the provisions of this article. The Board shall prescribe what shall constitute unlawful absence, what causes may constitute legitimate excuses for temporary nonattendance due to physical or mental inability to attend, and under what circumstances teachers, principals, or superintendents may excuse pupils for nonattendance due to immediate demands of the farm or the home in certain seasons of the year in the several sections of the State. It shall be the duty of all school officials to carry out such instructions from the State Board of Education, and any school official failing to carry out such instructions shall be guilty of a misdemeanor: Provided, that the compulsory attendance law herein prescribed shall not be in force in any city or county that has a higher compulsory attendance feature than that provided herein. (155, c. 1372, art. 20, s. 2; 1963, c. 1223, s. 7.)

Editor's Note.—The 1963 amendment substituted "unlawful absence" for the word "truancy" in the second sentence.

§ 115-168. Attendance counselors; reports; prosecutions. — The State Superintendent of Public Instruction shall prepare such rules and procedures and furnish such blanks for teachers and other school officials as may be necessary for reporting such case of unlawful absence or lack of attendance to the attendance counselor of the respective administrative units. Such rules shall provide, among other things, for a notification in writing, to the person responsible for the nonattendance of any child, that the case is to be reported to the attendance counselor of the administrative unit unless the law is complied with

immediately. Upon recommendation of the superintendent, county and city boards of education may employ attendance counselors and such counselors shall have authority to report and verify on oath the necessary criminal warrants or other documents for the prosecutions of violations of this article: Provided, that school administrative units shall provide in their local operating budgets for travel and necessary office expense for such attendance counselors as may be employed through State and/or local funds. The State Board of Education shall determine the formula for allocating attendance counselors to the various county and city administrative units, establish their qualifications, and shall develop a salary schedule which shall be applicable to such personnel; provided that persons now employed by county and city boards of education as attendance officers shall be deemed qualified as attendance counselors under the terms of this article, subject to the approval of said county and city boards of education; provided further, that until qualified persons become available, county and city boards of education are hereby authorized to employ as attendance counselors persons not determined by the State Board of Education to be qualified under the terms of this article. (1955, c. 1372, art. 20, s. 3; 1957, c. 600; 1961, c. 186; 1963, c. 1223, s. 8.)

Editor's Note.—

The 1961 amendment substituted "director" for "superintendent" in a former proviso.

The 1963 amendment rewrote this sec-

tion, substituting "attendance counselor" for "attendance officer" and "unlawful absence" for "truancy" and making other changes.

§ 115-169. Violation of law; penalty.

Nonpayment of Fine Prerequisite to Prison Sentence.—Where there was nothing in the record tending to show that the court below had imposed a fine on defendant for failure to send his child to school,

and by reason of his failure to pay such fine a prison sentence was imposed, a prison sentence imposed under this section was without sanction of law. *State v. Miday*, 263 N.C. 747, 140 S.E.2d 325 (1965).

§ 115-170. Investigation and prosecution by attendance counselor.—The school attendance counselor shall investigate all violators of the provisions of this article. The reports of unlawful absence required to be made by teachers and principals to the attendance counselor shall, in his hands, in case of any prosecution, constitute prima facie evidence of the violation of this article and the burden of proof shall be upon the defendant to show the lawful attendance of the child or children upon an authorized school. (1955, c. 1372, art. 20, s. 5; 1961, c. 186; 1963, c. 1223, s. 9.)

Editor's Note.—

The 1961 amendment substituted "director" for "superintendent" in the former catchline and former first sentence.

The 1963 amendment deleted the for-

mer references to "county director of public welfare" and "truant officer provided for by law." It also substituted "counselor" for "officer" in the first and second sentences.

§ 115-171. Investigation as to indigency of child.—If affidavit shall be made by the parent of a child or by any other person that any child between the ages of seven and sixteen years is not able to attend school by reason of necessity to work or labor for the support of itself or the support of the family, then the attendance counselor shall diligently inquire into the matter and bring it to the attention of some court allowed by law to act as a juvenile court, and said court shall proceed to find whether as a matter of fact such parents, or persons standing in loco parentis, are unable to send said child to school for the term of compulsory attendance for the reasons given. If the court shall find, after careful investigation, that the parents have made or are making bona fide effort to comply with the compulsory attendance law, and by reason of illness, lack of earning capacity, or any other cause which the court may deem valid and sufficient, are

unable to send said child to school, then the court shall find and state what help is needed for the family to enable the attendance law to be complied with. The court shall transmit its findings to the director of public welfare of the county or city in which the case may arise for such welfare officer's consideration and action. (1955, c. 1372, art. 20, s. 6; 1961, c. 186; 1963, c. 1223, s. 10.)

Editor's Note. — The 1961 amendment substituted "director" for "superintendent" in the last sentence.

The 1963 amendment substituted "attendance counselor" for "attendance officer" in the first sentence.

ARTICLE 20A.

Child Health Program.

§ 115-175.1. **Expenditures.**—Not less than ninety per cent (90%) of the expenditures from the appropriation for each year to the State Board of Education under the Nine Months School Fund for the Child Health Program shall be expended through the Child Health Program of the State Board of Education for the diagnosis and correction of chronic, remediable physical defects of public school children, in the following manner:

- (1) Upon discovery of a chronic, remediable defect, if it appears that the expenditure of school health funds will be required to provide spectacles, prosthesis, or other correction, the appropriate school official shall forthwith notify the county director of public welfare of the county in which the child resides. Thereupon, the director of public welfare shall make such investigation as necessary and only upon his certification of financial need shall funds be expended for this purpose: Provided, that in cases of minor dental defects involving expenditures not in excess of ten dollars (\$10.00), school and health department personnel may determine financial need.
- (2) Child Health Program funds as defined in this section shall be expended in accordance with a uniform State-wide schedule of fees and costs, and only to provide spectacles, prosthesis, and other correction of chronic, remediable defects of public school children: Provided, that an amount not in excess of ten per cent (10%) of the appropriation for this program for each year may be expended for case finding, health education, and intensive follow-up services. (1961, c. 833, s. 15; 1965, c. 356.)

Editor's Note.—The act inserting this section became effective July 1, 1961.

The 1965 amendment substituted "direc-

tor" for "superintendent" in subdivision (1).

ARTICLE 21.

Assignment and Enrollment of Pupils.

§ 115-176. **Authority to provide for assignment and enrollment of pupils; rules and regulations.**

Assignments on a racial basis are neither authorized nor contemplated by permissive Pupil Enrollment Act. *Jeffers v. Whitley*, 309 F. (2d) 621 (1962).

And Such Assignments Are Unconstitutional. — It is an unconstitutional administration of the North Carolina Pupil Enrollment Act to assign pupils to schools according to racial factors. *Wheeler v. Durham City Board of Education*, 309 F. (2d) 630 (1962).

Authority for Assignment, etc.—

In accord with original. See *McKissick v. Durham City Board of Education*, 176 F. Supp. 3 (1959).

The duty to recognize the constitutional rights of pupils rests primarily upon the school board, and there it should be placed by an appropriate order of the court, for the United States district court has a secondary duty of enforcement of individual rights and of supervision of the steps taken

by the school board to bring itself within the requirements of the law. *Jeffers v. Whitley*, 309 F. (2d) 621 (1962).

State officials are not indispensable, etc.—

Members of the North Carolina State Board of Education are neither necessary nor proper parties to an action against a city board of education. *McKissick v. Durham City Board of Education*, 176 F. Supp. 3 (1959).

Administrative Remedy Must Be Exhausted.—

The administrative remedies provided under this article must be exhausted before the courts of the United States will grant injunctive relief, and rights must be asserted as individuals, not as a class or group. *McKissick v. Durham City Board of Education*, 176 F. Supp. 3 (1959); *Jeffers v. Whitley*, 197 F. Supp. 84 (1961), affirmed in part and reversed in part in 309 F. (2d) 621 (1962).

The fact that administrative remedies provided under the State statutes, if fairly administered, must be exhausted before courts of the United States will grant injunctive relief, and the fact that such rights must be asserted as individuals and not as a class or group, is no longer subject to debate. *Wheeler v. Durham City Board of Education*, 196 F. Supp. 71 (1961).

The federal court is not authorized to act until the administrative remedies have been properly sought and it is shown that the statute is being unconstitutionally administered. After the hearing and final decision thereon, if one is not satisfied, and can show that he has been discriminated against because of his race, he may then apply to the federal court for relief. *Morrow v. Mecklenburg County Board of Education*, 195 F. Supp. 109 (1961).

And burden of proof is on the plaintiffs to establish by a preponderance of the evidence that they have exhausted their Administrative remedies before applying to the federal courts for injunctive relief. *McKissick v. Durham City Board of Education*, 176 F. Supp. 3 (1959).

The burden is upon plaintiffs seeking a transfer to establish by a preponderance of the evidence that they were denied a constitutional right because of their race. *Jeffers v. Whitley*, 197 F. Supp. 84 (1961), affirmed in part and reversed in part in 309 F. (2d) 621 (1962).

Assumption That State Officials Will Obey Law.—Until there has been a failure of the administrative process, it should be assumed in a federal court that State officials will obey the law when their official

action is properly invoked. *Jeffers v. Whitley*, 309 F. (2d) 621 (1962).

Where the school board has represented to the court that standards and criteria of assignment will be applied without regard to the race of the applicant, until it can be demonstrated that this representation is false, there is no ground for complaint. *Wheeler v. Durham City Board of Education*, 210 F. Supp. 839 (1962).

When, however, administrators have displayed a firm purpose to circumvent the law, when they have consistently employed the administrative processes to frustrate enjoyment of legal rights, there is no longer room for indulgence of an assumption that the administrative proceedings provide an appropriate method by which recognition and enforcement of those rights may be obtained. *Jeffers v. Whitley*, 309 F. (2d) 621 (1962).

When Administrative Remedy Need Not Be Exhausted.—When an administrative remedy respecting school assignments and transfers, however fair upon its face, has, in practice, been employed principally as a means of perpetration of discrimination and of denial of constitutionally protected rights, it is consistently held inadequate. A remedy so administered need not be exhausted or pursued before resort to the courts for enforcement of the protected rights. *Jeffers v. Whitley*, 309 F. (2d) 621 (1962).

School boards are required to reasonably administer the assignment statutes if pupils are to be required to exhaust their administrative remedies under these statutes before applying to the courts for relief. *Wheeler v. Durham City Board of Education*, 196 F. Supp. 71 (1961).

Voluntary Separation of Races.—Though a voluntary separation of the races in schools is uncondemned by any provision of the Constitution, its legality is dependent upon the volition of each of the pupils. If a reasonable attempt to exercise a pupil's individual volition is thwarted by official coercion or compulsion, the organization of the schools, to that extent, comes into plain conflict with the constitutional requirement. *Jeffers v. Whitley*, 309 F. (2d) 621 (1962).

If a voluntary system is to justify its name, it must, at reasonable intervals, offer to the pupils reasonable alternatives, so that, generally, those who wish to do so may attend a school with members of the other race. *Jeffers v. Whitley*, 309 F. (2d) 621 (1962).

Dual System of Attendance Areas. —Where the school board maintained a dual system of attendance areas for elementary

students based on race, the constitutional rights of negro applicants were offended. *Wheeler v. Durham City Board of Education*, 196 F. Supp. 71 (1961).

Even though in most instances a dual system of attendance areas resulted in children, both white and colored, being assigned to elementary schools nearest their homes, this did not remove the constitutional barrier against the maintenance of dual attendance areas, and negro plaintiffs were entitled to have such dual attendance areas abolished. *Wheeler v. Durham City Board of Education*, 196 F. Supp. 71 (1961).

Assignment to School outside Administrative Unit.—This section provides for assignment en masse upon the basis of residence to a school outside the administrative unit if the boards agree in writing, without notice, or the approval of the child or its parents, and without hearing, and no child shall be enrolled in or permitted to attend any other public school. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

Assignment of Pupils outside County of Their Residence.—Nowhere in this article is there any authority to assign pupils outside the county of their residence. The assignment by a county board of education of the plaintiffs to the schools in another county was without authority and of no effect. Plaintiffs have a legal right to the enjoyment of the opportunities in the county of their residence and the adminis-

trative Board cannot justify requiring their resort to opportunities elsewhere. *Griffith v. Board of Education of Yancey County*, 186 F. Supp. 511 (1960).

When Class Action Proper.—Where each plaintiff was rejected for the same or similar reasons and each sought in the application the identical relief, having exhausted their administrative remedies they have the right under the law to maintain a class action in the federal courts in behalf of themselves and others likewise qualified. *Griffith v. Board of Education of Yancey County*, 186 F. Supp. 511 (1960).

Relief in Class Action.—On behalf of others, similarly situated, negro plaintiffs are not entitled to an order requiring the school board to effect a general intermixture of the races in the schools, but they are entitled to an order enjoining the school board from refusing admission to any school of any pupil because of the pupil's race. *Jeffers v. Whitley*, 309 F. (2d) 621 (1962).

For a statement of judicial relief that must be granted to school children who have been initially assigned on a racial basis, see *Jeffers v. Whitley*, 309 F. (2d) 621 (1962).

Applied in Fremont City Board of Education v. Wayne County Board of Education, 259 N. C. 280, 130 S. E. (2d) 408 (1963).

§ 115-177. Methods of giving notice in making assignments of pupils.

Good Faith Required. — Utmost good faith is required on the part of public officials, and the court should never condone dilatory practices or schemes designed to deny any citizens of his constitutional rights. *McKissick v. Durham City Board of Education*, 176 F. Supp. 3 (1959).

And Reasonable Administration. — Although a school board technically complied with this section by giving notice of initial assignments by publication of notice two times in a local newspaper, but so late as

to make it practically impossible for pupils desiring reassignment to pursue their administrative remedies prior to the opening of school, a reasonable administration is required if pupils are to be required to exhaust their administrative remedies before applying to the courts for relief. *Wheeler v. Durham City Board of Education*, 196 F. Supp. 71 (1961).

Applied in Morrow v. Mecklenburg County Board of Education, 195 F. Supp. 109 (1961).

§ 115-178. Application for reassignment; notice of disapproval; hearing before board.

Reassignment Is Made on Individual Basis.—Reassignment is in the nature of a special case and made on an individual student basis, upon the request of the parent. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

And Emphasis Is on Welfare of Child and Effect on School.—The statute places all emphasis on the welfare of the child

and the effect upon the school to which reassignment is requested. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

Exhaustion of State Remedies Required.—Persons aggrieved by the actions of the school officials of a state may not appeal for relief to the federal courts until they have exhausted the remedies afforded them by the statutes of the state. *Holt v. Ral-*

eight City Board of Education, 265 F. (2d) 95 (1959).

See note to § 115-176.

Failure to Make Second Application.—Where plaintiffs were assigned by the Board to the school structure to which they sought admission, but a merger of two schools was followed in a few days by a series of actions whereby the newly integrated school was disintegrated without notice to the plaintiffs, their desire to attend an integrated school was completely frustrated and relief should not be denied on the ground that the plaintiffs have failed to make a second application to the Board for reassignment after the merger of the two schools had taken place, nor should the plaintiffs be required again to pursue the administrative remedies without the aid of the court. *McCoy v. Greensboro*

City Board of Education, 283 F. (2d) 677 (1960).

Criteria for Considering Applications for Transfer.—The courts have uniformly approved residence and academic preparedness as appropriate criteria for considering applications for transfer. A variety of other criteria would undoubtedly be appropriate in given situations, so long as such criteria are not used in such a way as to deprive individuals of their constitutional rights. *Wheeler v. Durham City Board of Education*, 196 F. Supp. 71 (1961).

Applied in *Morrow v. Mecklenburg County Board of Education*, 195 F. Supp. 109 (1961); *Vickers v. Chapel Hill City Board of Education*, 196 F. Supp. 97 (1961).

Cited in *Wheeler v. Durham City Board of Education*, 210 F. Supp. 839 (1962).

§ 115-179. Appeal from decision of board.

The word "de novo" means fresh or anew; for a second time; and a de novo trial in appellate court is a trial had as if no action whatever had been instituted in the court below. In *re Hayes*, 261 N.C. 616, 135 S.E.2d 645 (1964).

And Court Has Power to Make Reassignment.—The appeal in this de novo hearing vests the superior court with full power to make the requested reassignment

if permitted by law. In *re Hayes*, 261 N.C. 616, 135 S.E.2d 645 (1964).

Waiver of Jury Trial.—While the statute provides for a de novo hearing before a jury, nevertheless the parties, by consenting to reference to a referee, waive the jury trial and substitute therefor the hearing before the referee. In *re Hayes*, 261 N.C. 616, 135 S.E.2d 645 (1964).

SUBCHAPTER IX. SCHOOL TRANSPORTATION.

ARTICLE 22.

School Buses.

§ 115-180. Authority of county and city boards of education.

Transportation of School Bands and Athletic Teams.—While it is true that this article, which governs the operation of school buses, makes no provision one way or the other for the transportation of athletic teams or school bands, it is equally true that school bands and athletic teams are under the control of the school authorities. Therefore the board controlling such activities would have the inherent right to contract for such transportation as might be necessary to transport its athletic teams and its bands to and from such events as have been scheduled under the supervision of school authorities. *State v. McKinnon*, 254 N. C. 1, 118 S. E. (2d) 134 (1961).

Exempted from Regulation of Bus Act of 1949.—See *State v. McKinnon*, 254 N. C. 1 118 S. E. (2d) 134 (1961).

State Board Relieved of Responsibility.—The General Assembly relieved the State Board of Education from all responsibility in connection with the operation and control of school buses in this State by the enactment of this article, which authorizes county and city boards of education to operate buses for the transportation of pupils enrolled in the public schools of such county or city administrative units. *Huff v. Northampton County Board of Education*, 259 N. C. 75, 130 S. E. (2d) 26 (1963).

§ 115-181. Authority and duties of State Board of Education.

Quoted in *Turner v. Gastonia City Board of Education*, 250 N. C. 456, 109 S. E. (2d) 211 (1959).

§ 115-181.1: Repealed by Session Laws 1965, c. 1095, s. 1, effective July 1, 1965.

Editor's Note. — The repealed section derived from Session Laws 1963, c. 990, s. 1.

§ 115-183. Use and operation of school buses.

Local Modification.—Mecklenburg: 1961, c. 143.

§ 115-185. School bus drivers; monitors.

Applied in Huff v. Northampton County Board of Education, 259 N. C. 75, 130 S. E. (2d) 26 (1963).

Cited in Branch Banking & Trust Co. v. Wilson County Board of Education, 251 N. C. 603, 111 S. E. (2d) 844 (1960).

§ 115-186. School bus routes.

(b) Unless road or other conditions shall make it inadvisable to do so, public school buses shall be so routed on state-maintained highways that the school bus, to which such pupil is assigned, shall pass within one mile of the residence of each pupil, who lives one and one half miles or more from the school to which such pupil is assigned.

(e) No provision of this subchapter shall be construed to place upon the State, or upon any county or city, any duty to supply any funds for the transportation of pupils, or any duty to supply funds for the transportation of pupils who live within the corporate limits of the city or town in which is located the public school in which such pupil is enrolled or to which such pupil is assigned, even though transportation to or from such school is furnished to pupils who live outside the limits of such city or town. (1955, c. 1372, art. 21, s. 7; 1959, c. 573, s. 15; 1963, c. 990, ss. 2, 3; 1965, c. 1095, ss. 2, 3.)

Editor's Note.—

The 1963 amendment, effective July 1, 1965, rewrote subsection (b) and repealed subsection (e).

The 1965 amendment, effective July 1, 1965, again rewrote subsection (b) to read as it did prior to the 1963 amendment and re-enacted subsection (e) to read as it did

prior to the 1963 amendment.

As only subsections (b) and (e) were affected by the amendments, the rest of the section is not set out.

Cited in Morrow v. Mecklenburg County Board of Education, 195 F. Supp. 109 (1961).

§ 115-187. Inspection of school buses and activity buses; report of defects by drivers; discontinuing use until defects remedied.

(d) The superintendent of schools in each county, and in each city administrative unit, shall cause each activity bus which is used for the transportation of students by such county or city administrative unit or any public school system therein to be inspected for mechanical defects, or other defects which may affect the safe operation of such activity bus, at the same time and in the same way and manner as the regular public school buses for the normal transportation of public school pupils are inspected. A report of such inspection, together with the recommendations of the person making the inspection, shall be filed with the principal of the school which uses and operates such activity bus and a copy shall be forwarded to the superintendent of schools or city administrative unit involved. It shall be the duty of the driver of each activity bus to make the same reports to the principal of the school using and operating such activity as is required by this section. If any public school activity bus is found to be so defective that the activity bus may not be operated with reasonable safety, it shall be the duty of such principal to cause the use of such activity bus to be discontinued until such defect is remedied to the satisfaction of the person making the inspection and a report to this effect has been filed in the manner herein prescribed. Nothing in this subsection shall authorize the use of State or local tax funds for the pur-

chase, operation or repair of any activity bus. (1955, c. 1372, art. 21, s. 8; 1961, c. 474.)

Editor's Note.—The 1961 amendment section was not affected by the amended subsection (d). As the rest of the amendment it is not set out.

§ 115-188. Purchase and maintenance of school buses, materials and supplies.

(h) Appropriations made in the biennial Budget Appropriation Act for the purchase of public school buses shall be permanent appropriations, and unexpended portions of those appropriations shall not revert to the general fund at the end of the biennium for which appropriated. Any unexpended portion of those appropriations shall at the end of each fiscal year be transferred to a reserve account and shall be held, together with any other funds appropriated for the purpose, for the purchase of public school buses. (1955, c. 1372, art. 21, s. 9; 1961, c. 833, s. 16.)

Editor's Note.—The 1961 amendment, affected by the amendment only subsection (h) is set out.
(h). As the rest of the section was not

§ 115-190.1. Transportation continued for area annexed to municipality.—In each and every area of the State where school bus transportation of pupils to and from school is now being provided, such school transportation shall not be discontinued by any State or local governmental agency for the sole reason that the corporate limits of any municipality have been extended to include such area since February 6, 1957, and school bus transportation of pupils shall be continued in the same manner and to the same extent as if such area had not been included within the corporate limits of a municipality. (1957, c. 1375; 1963, c. 917; c. 990, s. 4; 1965, c. 1095, s. 4.)

Editor's Note. — The 1963 amendment inserted the words "or any school located in such area" in two places in this section. did prior to the 1963 amendment. This section had been repealed by Session Laws 1963, c. 990, s. 4, effective July 1 1965.

The 1965 amendment, effective July 1, 1965, re-enacted this section to read as it

SUBCHAPTER X. INSTRUCTION.

ARTICLE 24.

Courses of Study.

§ 115-199. Adult education.—When in the judgment of the State Board of Education a program of adult education should be established as a part of the public school system and when appropriations have been made therefor, there shall be organized and administered under the general supervision of the State Superintendent of Public Instruction, course in adult education: Provided, that county and city boards of education, in their discretion, may institute and support such programs from local funds upon the approval of the State Board of Education. (1955, c. 1372, art. 23, s. 2; 1963, c. 448, s. 24.)

Editor's Note. — The 1963 amendment, "upon the approval of the State Board of Education" at the end of the section.
effective July 1, 1963, added the words

§ 115-202. Boards of education required to provide courses in operation of motor vehicles.—(a) Course of Training and Instruction Required in Public High Schools.—The State Board of Education and county and city boards of education in this State are hereby required to provide as a part of the program of the public high schools in this State a course of training and instruction in the operation of motor vehicles and to make such courses available for all persons of provisional license age, including public school students, nonpublic school students and out-of-school youths (persons under 18 years of age whose physical and mental

qualifications meet license requirements) in conformance with course requirements and funds made available under the provisions of G.S. 20-88.1 and/or as hereinafter provided.

(b) Inclusion of Expense in Budget.—The county and city boards of education of every administrative unit are hereby authorized to include as an item of instructional service and as a part of the current expense fund of the budget of the several high schools under their supervision, the expense necessary to install and maintain such a course of training and instructing eligible persons in such schools in the operation of motor vehicles.

(c) Content of Course; What Persons Eligible.—The words “a course of training and instruction for eligible persons in the operation of motor vehicles” as applied to this section shall be construed to mean such course of instruction in the operation of motor vehicles as shall be prescribed or approved by the State Department of Public Instruction, provided that every such course shall include actual operation of motor vehicles by the persons eligible for same, under the supervision of a qualified instructor. Only such persons of the completed age of 14 years and 6 months, and as shall be approved by the principal of the school, shall be eligible for such course of instruction, subject to rules and regulations prescribed by the State Department of Public Instruction.

(1965, c. 397.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, rewrote subsection (a), inserted “such” following “maintain” and substituted “persons” for “students” in subsection (b), substituted “persons” for “students” in the quoted language at the beginning of subsection (c), substituted “persons” for “students” preceding “eligible”

near the end of the first sentence in that subsection, substituted “persons” for “students” and “approved” for “designated” in the last sentence of that subsection and deleted “upon recommendation of two teachers” following “school” in such sentence.

Only the subsections affected by the amendment are set out.

ARTICLE 25.

Selection and Adoption of Textbooks.

§ 115-207. **State Board of Education to select and adopt textbooks.**—The Board is hereby authorized to select and adopt for the exclusive use in the public schools of North Carolina, textbooks, publications, and instructional materials needed for instructional purposes in each grade and on each subject matter in which instruction is required by law. It shall adopt for a period of not less than five years, two or more basal primers for the first grade, two or more basal readers for each of the first three grades, one or more basal readers for grades four through eight inclusive, and one or more basal books or series of books on all other subjects required to be taught in the first eight grades, and one or more basal books for all subjects taught in the high school: Provided, further, that the State Board of Education may enter into contract with a publisher for a period of less than five years, if any advantage may accrue to the schools as a result of a shorter contract than five years. (1955, c. 1372, art. 24, s. 2; 1959, c. 693, s. 2; 1965, c. 584, s. 18.)

Editor's Note.—

The 1965 amendment inserted “or more” preceding “basal” throughout the section

and deleted two provisos, one of which had been added by the 1959 amendment.

ARTICLE 26.

Providing Basal and Supplemental Textbooks and Instructional Materials.

§ 115-216. **Powers and duties of State Board of Education.**

(5) Provide supplementary readers and other supplementary books for the elementary children in the public elementary schools of North Carolina

on a rental basis. Said annual rental charge shall be collected in an amount not to exceed one-third of the cost of said textbooks: Provided, that the Board shall not charge a rental fee for books, supplies, and materials used in the public schools in excess of the actual cost to the State, including the handling and administration of such rentals. Provided, further, within funds available the Board may provide for the free use of supplementary readers and other supplementary books in the public elementary schools.

(1965, c. 584, s. 19.)

Editor's Note.—The 1965 amendment added the second proviso at the end of subdivision (5).

As only subdivision (5) was changed by the amendment, the rest of the section is not set out.

ARTICLE 27.

Vocational Education.

§ 115-229. Acceptance of benefits of Federal Vocational Education Act.—The State of North Carolina hereby accepts all the provisions and benefits of acts passed by the Congress of the United States providing federal funds for states for vocational and technical education programs: Provided, however, that the State Board of Education is not authorized to accept any such funds upon any condition that the public schools of this State shall be operated contrary to any provision of the Constitution or statute of this State. (1955, c. 1372, art. 26, s. 1; 1963, c. 448, s. 24.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted the reference to acts of Congress "providing fed-

eral funds for states for vocational and technical education programs" for a reference, by title, to a specific act.

§ 115-230. Powers and duties of Board.—The State Board of Education shall have all necessary authority to cooperate with the United States Office of Education in the administration of the federal acts assisting vocational and technical education, to administer any legislation pursuant thereto enacted by the State of North Carolina, and to administer the funds provided by the federal government and the State of North Carolina for the promotion of vocational education. The Board shall have full authority to formulate plans for the promotion of vocational education in such subjects as are an essential and integral part of the public school system of education of the State of North Carolina, and to provide for the preparation of teachers in such subjects. It shall have full authority to fix the compensation, subject to the approval of the Personnel Department, of such officials and assistants as may be necessary to administer the federal act and this article for the State of North Carolina, and to pay such compensations and other necessary expenses of administration from funds appropriated. It shall have authority to make studies and investigations relating to vocational education in such subjects; to publish the results of such investigations, and to issue other publications as seem necessary to the Board; to promote and aid in the establishment by local communities of schools, departments, or classes giving instruction in such subjects; to cooperate with local communities in the maintenance of such schools, departments, or classes; to prescribe qualifications for teachers, directors, and supervisors of such subjects; to cooperate in the maintenance of classes supported and controlled by public institutions for the preparation of teachers, directors and supervisors of such subjects, or to maintain such classes under its own direction and control; to establish and determine by general regulations the qualifications to be possessed by persons engaged in the training of vocational teachers. (1955, c. 1372, art. 26, s. 2; 1959, c. 915, s. 2; 1963, c. 448, s. 24.)

Editor's Note.—

The 1963 amendment, effective July 1.

1963, substituted "federal acts assisting vocational and technical education" for "Fed-

eral Vocational Educational Act" in the first sentence and deleted the words "in agricultural subjects, trade and industrial subjects, and home economics subjects" at

the end of the first sentence. It also deleted, at the end of the section, provisions relating to industrial education centers.

§ 115-230.1. Development of Industrial Education Program.—The State Board of Education is authorized and directed to develop for the public schools of the State a more diversified and comprehensive program of instruction in basic work skills, applied economics, and industrial education, and to introduce in various public schools in the State such program on an experimental basis under regulations, standards, and procedures promulgated by the Board. The Board may provide for the in-service training or retraining of vocational and other teachers in cooperation with institutions of higher education in preparation for the program herein authorized. The Board may provide, under standards prescribed by it, funds, on a matching basis or otherwise, for both current expense costs and equipment necessary in the conduct of the program. The title to any equipment provided a local county or city board of education for this purpose shall be held by the county or city board of education to which the funds are allocated. (1963, c. 841.)

§ 115-232. State appropriation for vocational education. — The State of North Carolina appropriates out of the General Fund a sum of money for each fiscal year at least equal to the maximum sum which may be allotted to the State of North Carolina from the federal treasury under the provisions of the federal vocational and technical education acts and amendments thereto: Provided, that only such portion of the above State appropriation shall be used as may be necessary to carry on the work outlined in this article to meet the federal requirements or to meet requirements approved by the State Board of Education. (1955, c. 1372, art. 26, s. 4; 1963, c. 448, s. 24.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "federal vocational and technical education acts" for "Smith-Hughes Act" near the middle of the section.

§ 115-234. Cooperation of county and city authorities with State Board. — County and city boards of education may cooperate with the State Board of Education in the establishment of classes giving instruction in vocational subjects, and may use moneys raised by public taxation in the same manner as moneys are used for other public school purposes: Provided, that vocational teachers shall be employed in the same manner as are other public school teachers. (1955, c. 1372, art. 26, s. 6; 1963, c. 448, s. 24.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "classes giving instruction in vocational subjects" for "vocational schools or classes giving instruction in agricultural subjects, or trade and industrial subjects, or in home economics subjects and distributive education" near the middle of the section.

ARTICLE 28.

Textile Training School.

§§ 115-236 to 115-239: Transferred to §§ 115A-39 to 115A-42 by Session Laws 1963, c. 448, s. 30, effective July 1, 1963.

ARTICLE 31.

Private Business, Trade and Correspondence Schools.

§ 115-245. Definitions.—As used in this article:

- (1) "Board of education" means the North Carolina State Board of Education.

- (2) "Correspondence school" means an educational institution privately owned and operated by an owner, partnership or corporation conducted for the purpose of providing, by correspondence, for a consideration, profit, or tuition, systematic instruction in any field or teaches or instructs in any subject area through the medium of correspondence between the pupil and the school, usually through printed or typewritten matter sent by the school and written responses by the pupil.
- (3) "Persons" means any individual, association, partnership or corporation, and includes any receiver, referee, trustee, executor, or administrator as well as a natural person.
- (4) "Private business school" or "business school" or "school" means an educational institution privately owned and operated by an owner, partnership or corporation, offering business courses for which tuition is charged, in such subjects as typewriting, shorthand (manual or machine), filing and indexing, receptionist's duties, key-punch, teletype, penmanship, bookkeeping, accounting, office machines, business arithmetic, English, business letter writing, salesmanship, personality development, leadership training, public speaking, real estate, insurance, traffic management, business psychology, economics, business management, and other related subjects of a similar character or subjects of general education when they contribute values to the objective of the course of study. Classes in any of the subjects herein referred to which are taught or coached in homes or elsewhere to five or less students are not included in the term "school" and shall be exempt from the requirements of this article.
- (5) "Private trade school" means an educational institution privately owned and operated by an owner, partnership or corporation, offering classes conducted for the purpose of teaching, for profit or for a tuition charge, any trade, technical, mechanical or industrial occupation or teaching any or several of the subjects needed to train youths or adults in the skills, technical knowledge, related industrial information, and job judgment, necessary for success in one or more skilled trades, industrial occupations or related occupations.
- (6) "Superintendent" means the North Carolina State Superintendent of Public Instruction. (1955, c. 1372, art. 30, ss. 1, 2; 1957, c. 1000; 1961, c. 1175, s. 1.)

Editor's Note.—The 1961 amendment rewrote the former article, consisting of §§ 115-245 to 115-254, so as to appear as present §§ 115-245 to 115-254.1.

Constitutionality.—For case discussing constitutionality of this article prior to the 1961 amendment, as applied to nonresident schools and solicitors, see *State v. Wil-*

liams, 253 N. C. 337, 117 S. E. (2d) 444 (1960).

Purpose of Article.—The primary purpose of this article is to control and regulate certain private schools—specifically business, trade and correspondence schools. *State v. Williams*, 253 N. C. 337, 117 S. E. (2d) 444 (1960).

§ 115-246. Exemptions.—It is the purpose of this article to include all private schools operated for profit provided that the following schools shall be exempt from the provisions of this article:

- (1) Nonprofit schools conducted by bona fide eleemosynary or religious institutions.
- (2) Schools maintained or classes conducted by employers for their own employees where no fee or tuition is charged.
- (3) Courses of instruction given by any fraternal society, civic club, or benevolent order, which courses are not operated for profit.
- (4) Any school for which there is another legally existing licensing board in this State.

- (5) Any established university, professional, or liberal arts college, public or private high school approved by the State Department of Public Instruction, or any State institution which has heretofore offered, or which may hereinafter offer one or more courses covered in this article, provided that the tuition fees and charges, if any, made by such university, college, high school, or State institution shall be collected by their regular officers in accordance with the rules and regulations prescribed by the board of trustees or governing body of such university, college, high school, or State institution; but provisions of the article shall apply to all business schools, trade schools, or correspondence schools or branch schools, as defined in this article, and operated within the State of North Carolina as such institutions, except schools for which there are other legally existing licensing boards. (1955, c. 1372, art. 30, ss. 1, 2; 1957, c. 1000; 1961, c. 1175, s. 2.)

§ 115-247. State Board of Education to administer article; issuance of diplomas by schools; investigation and inspection; regulations and standards.—(a) The Board of Education, acting by and through the Superintendent of Public Instruction, shall have authority to administer and enforce this article and to issue licenses to private schools and educational institutions, as the same are defined herein, whose sustained curriculum is of a grade equal to that prescribed for similar public schools and educational institutions of the State and which have met the standards set forth by the Board of Education, including but not limited to course offerings, adequate facilities, financial stability, competent personnel and legitimate operating practices.

(b) Upon approval by the Board of Education, any such private school or educational institution may by and with the approval of said Board of Education issue certificates and diplomas.

(c) The Board of Education, acting by and through the Superintendent of Public Instruction, shall formulate the criteria and the standards evolved thereunder for the approval of such schools or educational institutions, provide for adequate investigations of all schools applying for a license and issue licenses to those applicants meeting the standards fixed by the Board, maintain a list of schools approved under the provisions of this article which list shall be available for the information of the public, and provide for periodic inspection of all schools licensed under the provisions of this article. Through periodic reports required of licensed schools or branch schools and by inspections made by authorized representatives of the State Board of Education, the State Board of Education shall have general supervision over business, trade and correspondence schools in the State, the object of said supervision being to protect the health, safety and welfare of the public by having the licensed business, trade and correspondence schools maintain adequate, safe and sanitary school quarters, sufficient and proper facilities and equipment, sufficient and qualified teaching staff, and satisfactory programs of operation and instruction, and to have the school carry out its advertised promises and contracts made with its students and patrons. To this end the State Board of Education is authorized to issue such regulations and standards not inconsistent with the provisions of this article as are necessary to administer the provisions of this article. (1955, c. 1372, art. 30, s. 4; 1957, c. 1000; 1961, c. 1175, s. 3.)

Intent of Section.—It is the intent of this section that the State Board of Education pass upon the adequacy of the equipment, curricula and instructional personnel of the schools and protect students from fraud and breach of contract on the part of the schools and their agents and representatives. *State v. Williams*, 253 N. C. 337, 117 S. E. (2d) 444 (1960), decided under former § 115-249.

§ 115-248. License required; application for license; school bulletins; requirements for issuance of license; license restricted to courses indicated; supplementary applications.—(a) No person shall operate, con-

duct or maintain or offer to operate in this State a private school or educational institution as defined herein unless a license is first secured from the State Board of Education issued in accordance with the provisions of this article and the rules and regulations promulgated by the Board of Education under the authority of § 115-247. The license, when issued, shall constitute the formal acceptance by the Board of Education of the educational programs and facilities of each private school approved.

(b) Application for a license shall be filed in the manner and upon the forms prescribed and furnished by the Superintendent of Public Instruction for that purpose. Such application shall be signed by the applicant and properly verified and shall contain such of the following information as may apply to the particular school or branch school, for which a license is sought:

- (1) The title or name of the school or classes, together with the name and address of the ownership and of the controlling officers thereof;
- (2) The general field of instruction;
- (3) The place or places where such instruction will be given;
- (4) A specific listing of the equipment available for instruction in each field;
- (5) The qualifications of instructors and supervisors;
- (6) Financial resources available to equip and to maintain the school or classes;
- (7) And such additional information as the Board may deem necessary to enable it to determine the adequacy of the program of instruction and matters pertaining thereto. Each application shall be accompanied by a copy of the current bulletin or catalogue of the school which shall be in published form and certified by an authorized official of the school as being true and correct in content and policy. The school bulletin shall contain the following information:
 - a. Identifying data, such as volume number and date of publication.
 - b. Names of the institution and its governing body, officials and faculty.
 - c. A calendar of the institution showing legal holidays, beginning and ending date of each quarter, term or semester, and other important dates.
 - d. Institution's policy and regulations relative to leave, absences, class cuts, make-up work, tardiness and interruptions for unsatisfactory attendance.
 - e. Institution's policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course.
 - f. Institution's policy and regulations relative to standards of progress required of the student by the institution. (This policy will define the grading system of the institution; the minimum grades considered satisfactory; conditions for interruption for unsatisfactory grades or progress and description of the probationary period, if any, allowed by the institution; and conditions of re-entrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the institution and furnished the student).
 - g. Institution's policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct.
 - h. Detailed schedule for fees, charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other charges.
 - i. Policy and regulations of the institution relative to the refund of the unused portion of tuition, fees and other charges in

the event the student does not enter the course or withdraws or is discontinued therefrom.

j. A description of the available space, facilities and equipment.

k. A course outline for each course for which approval is requested, showing subjects or units in the course, type of or skill to be learned, and approximate time and clock hours to be spent on each subject or unit.

l. Policy and regulations of the institution relative to granting credit for previous educational training.

(c) After due investigation and consideration on the part of the Board as provided herein, a license shall be issued to the applicant when it is shown to the satisfaction of said Board that said applicant, school, programs of study or courses are found to have met the following criteria:

- (1) The courses, curriculum and instruction are consistent in quality, content and length with similar courses in public schools and other private schools in the State, with recognized accepted standards.
- (2) There is in the institution adequate space, equipment, instructional material and instructor personnel to provide training of good quality.
- (3) Education and experience qualifications of director, administrators and instructors are adequate.
- (4) The institution maintains a written record of the previous education and training of the student.
- (5) A copy of the course outline, schedule of tuition, fees and other charges, regulations pertaining to absences, grading policy and rules of operation and conduct will be furnished the student upon enrollment.
- (6) Upon completion of training, the student is given a certificate or diploma by the institution indicating the approved course and indicating that training was satisfactorily completed.
- (7) Adequate records as prescribed by the State Board of Education are kept to show attendance and progress or grades and satisfactory standards relating to attendance, progress and conduct are enforced.
- (8) The school complies with all local, city, county, municipal, State and federal regulations, such as fire codes, building and sanitation codes. The State Board of Education may require such evidence of compliance as is deemed necessary.
- (9) The school is financially sound and capable of fulfilling its commitments for training.
- (10) The school does not exceed its enrollment limitation as established by the State Board of Education.
- (11) The school does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission or intimation.
- (12) The school's administrators, directors, owners and instructors are of good reputation and character.
- (13) Such additional criteria as may be deemed necessary by the Board.

(d) Any license issued shall be restricted to the programs of instruction or courses specifically indicated in the application for a license. The holder of a license shall present a supplementary application as may be directed by the Superintendent for approval of additional programs of instruction or courses in which it is desired to offer instruction during the effective period of the license. (1955, c. 1372, art. 30, ss. 3, 4; 1957, c. 1000; 1961, c. 1175, s. 4.)

§ 115-249. Duration and renewal of licenses; notice of change of ownership, administration, etc.; license not transferable. — (a) All licenses issued shall expire on June 30 next following the date of issuance.

(b) Licenses shall be renewable annually on July 1, provided an application for the renewal of the license has been filed in the form and manner prescribed by

the Board and the renewal fee has been paid; also, provided the school and its courses, facilities, faculty and all other operations are found to meet the criteria set forth in the requirements for a school to secure an original license.

(c) After a license is issued to any school by the State Board of Education on the basis of its application, it shall be the responsibility of said school to notify immediately said Board of any changes in the ownership, administration, location, faculty, the instructional program or other changes as may affect significantly the course of instruction offered.

(d) In the event of the sale of such school, the license already granted to the original owner or operators thereof shall not be transferable to the new ownership or operators. (1955, c. 1372, art. 30, s. 4; 1957, c. 1000; 1961, c. 1175, s. 5.)

§ 115-250. "Commercial Education Fund"; refund of fees. — The fees and licenses collected under this section shall be placed in a special fund to be designated the "Commercial Education Fund" and shall be used under the supervision and direction of the State Board of Education for the administration of this article. No license fee shall be refunded in the event the application is rejected or the license suspended or revoked. (1961, c. 1175, s. 6.)

§ 115-251. Suspension, revocation or refusal of license; notice and hearing; judicial review; grounds.—(a) The Board of Education, acting by and through the Superintendent of Public Instruction, shall have the authority to refuse to issue a license and to suspend or revoke a license theretofore issued but before denying any such license, including the renewal thereof, and before suspending or revoking any license theretofore issued, he shall afford the applicant or holder of any such license an opportunity to be heard in connection therewith in person or by counsel and at least thirty days prior to the date set for a hearing on any such matter shall notify in writing the applicant for or the holder of any such license of the date of said hearing and assign therein the grounds for the action contemplated to be taken and as to which inquiry shall be made on the date of such hearing.

(b) The action of the Board of Education acting by and through the Superintendent of Public Instruction in refusing to grant a license or to renew a license, or in suspending or revoking a license, shall be subject to judicial review in all respects according to the provisions and procedure set forth in article 33 of chapter 143 of the General Statutes of North Carolina.

(c) The Board of Education, acting by and through the Superintendent of Public Instruction, shall have the power to refuse to issue or renew any such license and to suspend or revoke any such license theretofore issued in case it finds:

- (1) That the applicant for or holder of such a license has violated any of the provisions of this article or any of the rules and regulations promulgated thereunder; or
- (2) That the applicant for or holder of such a license has knowingly presented to the State Board of Education false or misleading information relating to approval; or
- (3) That the applicant for or holder of such a license has failed or refused to permit authorized representatives of the State Board of Education to inspect the school, or has refused to make available to them at any time upon request full information pertaining to matters within the purview of the Board of Education under the provisions of this article; or
- (4) That the applicant for or holder of such a license has perpetrated or committed fraud or deceit in advertising the school or in presenting to the prospective students written or oral information relating to the school, to employment opportunities, or to opportunities for enroll-

ment in other institutions upon completion of the instruction offered in the school.

- (5) That the applicant or licensee has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a crime involving moral turpitude by a judge or jury in any state or federal court.
- (6) That the applicant or licensee has failed to provide or maintain premises, equipment or conditions which are adequate, safe and sanitary, in accordance with such standards of the State of North Carolina or any of its political subdivisions, as are applicable to such premises and equipment.
- (7) That the licensee is employing teachers, supervisors or administrators who have not been approved by the Board.
- (8) That the licensee has failed to provide and maintain adequate premises, equipment, materials or supplies, or has exceeded the maximum enrollment for which the school or class was licensed.
- (9) That the licensee has failed to provide and maintain adequate standards of instruction or an adequate and qualified administrative, supervisory or teaching staff. (1961, c. 1175, s. 7.)

§ 115-252. Private schools advisory committee; appointment; duties.—(a) In the administration of this article, the Superintendent of Public Instruction shall appoint an advisory committee composed of not less than five members who shall serve at his will and pleasure and who are fairly representative of the types of private schools or educational institutions operated, conducted and maintained within this State, whose duties shall be to advise the Superintendent of Public Instruction regarding the criteria to be used in formulating standards and the rules and regulations thereunder to be prescribed for the administration of this article and the management and operation of the schools subject to the provisions hereof including the development of programs of instruction to be pursued in each type of institution subject to this article.

(b) The terms of the members shall be set by the Superintendent of Public Instruction. (1961, c. 1175, s. 8.)

§ 115-253. Execution of bond required; filing and recording; actions upon bond.—(a) Before the State Board of Education shall issue such license the person, partnership, association of persons, or corporation shall execute a bond in the sum of one thousand dollars (\$1,000.00), signed by a solvent guaranty company authorized to do business in the State of North Carolina, or by two solvent individual sureties, payable to the State of North Carolina, and approved as to solvency by the clerk of the superior court of the county in which such school or branch school will be located and conduct its business, conditioned that the principal in said bond will carry out and comply with each and every contract, made and entered into by said school or branch school, acting by and through its officers and agents with any student who desires to enter such school or branch school and to take any courses offered therein and will pay back to such student all amounts collected in tuition and fees in case of failure on the part of the parties obtaining a license from the State Board of Education to open and conduct a business school, trade school or a correspondence school, to comply with its contracts to give the instructions contracted for, and for full period evidenced by such contract. Such bond shall be filed with the clerk of the superior court of the county in which the school or branch school executing the bond is located, and shall be recorded by such clerk in a book provided for that purpose.

(b) The requirement herein specified for giving the aforesaid bond of one thousand dollars (\$1,000.00) shall apply to all business, trade or correspondence schools, or any branches thereof operating in North Carolina, and the State Board of Education shall not issue any license to any person, firm or corporation to operate any of the aforesaid schools until said bond has been given and notice

of the approval of same by the clerk of the superior court has been filed with said Board of Education. Operators' bonds of one thousand dollars (\$1,000.00) each shall be required for each branch of such business, trade, correspondence schools, or any branch thereof operated within the State by any person, partnership or corporation.

(c) In any and all cases where the party receiving the license from the State Board of Education fails to comply with any contract made and entered into with any student, or with the parents or guardian of said student, then the State of North Carolina upon the relation of said student, parent or guardian entering into the contract shall have a cause of action against the principal and sureties on the bonds herein provided for the full amount of payments made to such person, with six per cent (6%) interest from the date of payment of said amount. For a violation of its contract with a student, or for other good cause, the State Board of Education is authorized to revoke the license issued to the offending school. (1955, c. 1372, art. 30, s. 5; 1957, c. 1000; 1961, c. 1175, s. 9.)

§ 115-254. Operating school without license or bond made misdemeanor.—Any person, or each member of any association of persons, or each officer of any corporation who opens and conducts a business school, a trade school or a correspondence school, or branch school, as defined in this article without first having obtained the license herein required, and without first having executed the bond required shall be guilty of a misdemeanor and be punishable by a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) or thirty days' imprisonment, or both, at the discretion of the court, and each day said school continues to be open and operated shall constitute a separate offense. (1955, c. 1372, art. 30, § 7; 1957, c. 1000; 1961, c. 1175, s. 10.)

§ 115-254.1. Contracts with unlicensed schools and evidences of indebtedness made null and void.—All contracts entered into by business, trade or correspondence schools, or branch school, as defined in this article, with students or prospective students, and all promissory notes, or other evidence of indebtedness taken in lieu of cash payments by such schools shall be null and void unless such schools are duly licensed as required by this article. (1957, c. 1000; 1961, c. 1175, s. 11.)

ARTICLE 32.

Non-Public Schools.

§ 115-255. Responsibility of State Board of Education to supervise non-public schools; notice of intention to operate new school.—The State Board of Education, while providing a general and uniform system of education in the public schools of the State, shall always protect the right of every parent to have his children attend a non-public school by regulating and supervising all non-public schools serving children of secondary school age, or younger, to the end that all children shall become citizens who possess certain basic competencies necessary to properly discharge the responsibilities of American citizenship. The Board shall not, in its regulation of such non-public schools, interfere with any religious instruction which may be given in any private, denominational, or parochial school, but such non-public school shall meet the State minimum standards as prescribed in the course of study, and the children therein shall be taught the branches of education which are taught to the children of corresponding age and grade in the public schools and such instruction, except courses in foreign languages, shall be given in the English language.

New non-public schools shall file a notice of intention to operate a new school with the State Superintendent of Public Instruction prior to beginning of operation. (1955, c. 1372, art. 31, s. 1; 1965, c. 584, s. 20.)

Editor's Note.—The 1965 amendment added the second paragraph.

ARTICLE 33.

State Board of Education to License Certain Institutions and Regulate Degrees.

§§ 115-258 to 115-260: Repealed by Session Laws 1963, c. 448, s. 27, effective July 1, 1963.

ARTICLE 36.

Training of Mentally Retarded Children.

§ 115-296. **State Superintendent of Public Instruction to organize and administer program of training; rules; eligibility for training.**

Cross Reference.—As to training of educable mentally handicapped children, see §§ 115-300 to 115-305.

§ 115-299. **Allocation of State-aid funds to local boards.** — The State Board of Education, upon the finding in any school administrative unit of need for the program together with official and public interest and evidence of a financial ability and willingness to aid in maintaining a satisfactory program, shall allocate and transfer to the county or city board of education in whose administrative unit the training center is located such State-aid funds as shall be determined under the provisions of this article and under the rules of the State Superintendent of Public Instruction to be available for the operation and maintenance of said program or center. State funds shall be allocated uniformly to boards of education on a per capita basis, not less than three hundred sixty dollars (\$360.00) per fiscal year, for each eligible child enrolled in the program. (1957, c. 1369, s. 4; 1963, c. 688, s. 4.)

Editor's Note. — The 1963 amendment substituted "less than three hundred sixty dollars (\$360.00)" for the words "to exceed three hundred dollars (\$300.00)" in the last sentence.

ARTICLE 37.

Training of Educable Mentally Handicapped Children.

§ 115-300. **Organization of program; rules and regulations; eligibility for training; information to local school units.**—There shall be organized and administered by the Superintendent of Public Instruction and the State Board of Education under the general supervision of the State Superintendent of Public Instruction a program of training for the educable mentally handicapped children residing within the State. Such program shall be a continuing program to begin at the beginning of the school year 1961-62. The State Superintendent of Public Instruction, subject to approval of the State Board of Education, shall formulate reasonable rules prescribing the program and the procedures for its operation and maintenance and shall prescribe reasonable rules for determining a child's eligibility for participation in the program on the basis of adequate individual psychological, sociological, and medical evaluations and other related factors. In order to assure maximum participation by the local school administrative units, full information on the rules and regulations and other pertinent information shall be forwarded to the local school units in time for them to meet the requirements to qualify for participation in the program. (1961, c. 1146, s. 1.)

Cross Reference. — As to training of mentally retarded children, see §§ 115-296 to 115-299.

Editor's Note.—The act inserting this article became effective July 1, 1961.

§ 115-301. **Authority of local boards to establish programs; joint operation; duty of local superintendent.**—County and city boards of educa-

tion are hereby authorized to establish training programs for training the educable mentally retarded children in each administrative unit. Boards of education in more than one administrative unit may by written agreement recorded in their minutes jointly operate such a program. When directed by the board of education in the administrative unit, it shall be the duty of the superintendent of public instruction in that unit to conduct a survey of the children residing in said unit for the purpose of determining those who are educable mentally handicapped children. The superintendent shall then make a full report to the board as to his findings and shall thereafter report to the board, from time to time, any other such educable mentally handicapped children within the administrative unit when they shall come to his attention. (1961, c. 1146, s. 2.)

§ 115-302. Expenditure of State and local funds; gifts.—In addition to such other funds as may be available for their purpose, county or city boards of education establishing such programs are authorized to expend therefor any State or local funds apportioned to them under the provisions of this article. County and city boards may also receive gifts to be used for such programs and may expend them for such purposes. County and city boards of education are authorized to include in their capital outlay and current expense budgets funds to facilitate the establishment, maintenance, and operation of training programs pursuant to this article and the tax levying authorities are authorized to allow said budgetary items and to levy proper taxes therefor. (1961, c. 1146, s. 3.)

§ 115-303. Requests for teachers and other allotments from State Board; reasons for disapproval of requests to be given; transfer of funds.—When the county or city board of education in any administrative unit or units shall approve the establishment of a training program for educable mentally handicapped children in said unit or units, it may thereupon request from the State Board of Education allotment of teachers for the program and such other allotments as may be applicable to the program. When the program for training the educable mentally handicapped children in a unit or a combination of units meets the reasonable rules and regulations prescribed in accordance with § 115-300, the State Board of Education may provide teachers and other applicable allotments for such a program from the appropriation made to the Nine Months School Fund, notwithstanding any limitations express or implied on the amount for teachers and other allotments for this program in the Appropriations Act. Whenever a request is disapproved either for failure to qualify under the rules and regulations established under the authority of § 115-300 or because of lack of funds, the reason for such disapproval shall be given in writing by the State Superintendent of Public Instruction to the State Board of Education and to the superintendent of the unit or units which make the request and to the Advisory Budget Commission. The Director of the Budget, upon request from the State Board of Education, is authorized to make transfers to the Nine Months School Fund of any State funds which the State Board of Education may find available in any budget administered by the State Board of Education for the purpose of providing funds required for the program or programs which have been disapproved for lack of funds. (1961, c. 1146, s. 4.)

§ 115-304. Funds available for program.—From the appropriations to the Nine Months School Fund and such other appropriations as may be available, the State Board of Education may allocate and transfer to the State Department of Public Instruction for the biennium 1961-1963 an amount which the Board deems adequate to provide personnel to administer and supervise the program established under the provisions of this article in addition to the personnel presently in the Department of Public Instruction charged with the administration of education for handicapped persons. (1961, c. 1146, s. 5.)

§ 115-305. Determination of allotments by State Board; salary schedule for teachers.—In making allotments to the administrative units for

this program, the State Board of Education is authorized to determine the allotment of teachers and other applicable allotments which are deemed adequate to support the training program in each unit or combination of units and, even though such allotments exceed the allotments which would be required for a program for normal children, may make allocations on that basis. The State Board of Education is authorized, in its discretion, to provide a separate salary schedule for teachers serving this program. (1961, c. 1146, s. 6.)

ARTICLE 38.

Education of Exceptionally Talented Children.

§ 115-306. **Educational program established.**—There is hereby established a program for the education of exceptionally talented children within the public school system of North Carolina which shall be State-wide in operation and opportunity. (1961, c. 1077, s. 1.)

Editor's Note.—The act inserting this article became effective July 1, 1961.

§ 115-307. **Definitions.**—As used in this article,

- (1) The term "Director" means the Director of the Division for the Education of Exceptionally Talented Children within the public school system.
- (2) The term "exceptionally talented child" means a pupil in the public school system of North Carolina who possesses the following qualifications:
 - a. A group intelligence quotient of 120 or higher,
 - b. A majority of marks of A and B,
 - c. Emotional adjustment that is average or better,
 - d. Achievements at least two grades above the State norm, or in the upper 10% of local norms of the administrative unit, and
 - e. Shall be recommended by the pupil's teacher or principal.

The State Board is authorized to change the foregoing criteria for qualification as an exceptionally talented child, if deemed necessary, provided the qualifications shall be uniform in application.

- (3) The term "State Board" means the State Board of Education.
- (4) The term "State Superintendent" means the State Superintendent of Public Instruction. (1961, c. 1077, s. 2.)

§ 115-308. **Division for Education of Exceptionally Talented Children created.**—There is created within the State Department of Public Instruction a division to be known as the Division for the Education of Exceptionally Talented Children. (1961, c. 1077, s. 3.)

§ 115-309. **Division administered by Director; appointment and salary of Director; assistance, clerical help and travel allowances.** — The Division for the Education of Exceptionally Talented Children within the public school system shall be administered by a Director under the general supervision of the State Superintendent. The Director shall be appointed by the State Superintendent subject to the approval of the State Board. The salary of the Director shall be determined by the State Personnel Council upon recommendation of the State Board and shall be adequate to obtain a person highly trained and qualified by reason of education and experience. The State Board is authorized to provide the Director with such assistance, clerical help, and travel allowances as it may determine to be necessary to carry out the responsibilities of the office of Director under this article. (1961, c. 1077, s. 4.)

§ 115-310. **Supervisor for testing and pupil classification; appointment and duties; specialists for counseling and identification of**

students.—The Director shall recommend and the State Superintendent appoint, with the approval of the State Board, a supervisor for testing and pupil classification who shall, in cooperation with existing testing and pupil classification services of the Department of Public Instruction, be charged with the responsibility of testing and evaluating all children in the public school system for the purpose of identifying the exceptionally talented children. Said supervisor shall be a person well trained and professionally qualified to carry out this responsibility. In addition, the Director shall recommend and the State Superintendent appoint with the approval of the State Board, such specialists as may be necessary for adequate counseling and identification of such exceptionally talented school children throughout the State; and the State Board shall provide necessary funds for office expense and travel for the conduct of their work. (1961, c. 1077, s. 5.)

§ 115-311. District supervisors; appointment, duties and funds.—In each of the eight educational districts into which the State is divided by the General Assembly pursuant to article IX, § 8 of the Constitution of North Carolina, appropriate programs of education for exceptionally talented children shall be established and developed by a district supervisor of education of the exceptionally talented children in the district. The district supervisors shall be recommended by the Director and appointed by the State Superintendent with the approval of the State Board, and shall be well trained, professional personnel. The district supervisors shall be provided funds for office expense and travel allowances. Their duties shall include assistance of local administrative units in planning programs and developing curricula for the exceptionally talented pupils. (1961, c. 1077, s. 6.)

§ 115-312. Powers and duties of Director generally.—The Director, under the direction of the State Board and in accordance with the rules and regulations prescribed by it, is authorized to perform such other powers and duties as the State Board may prescribe for the implementation of the purposes of this article, including the following:

- (1) Research studies which will develop techniques, curricula, and materials especially applicable to exceptionally talented children;
- (2) Recommendation of special books, materials, and other supplies to be purchased by the State Board for the proper implementation of this article, including the local programs provided in § 115-313;
- (3) Direction of the district supervisors provided for in § 115-311 in the development of proper curricula and studies to fit the individual needs of exceptionally talented children within the district of the supervisor and of the local administrative units within such districts; and
- (4) Establishment of standards for the teachers of the exceptionally talented to be employed or paid in whole or in part pursuant to the provisions of this article and to give such examinations or tests as may be necessary to determine such qualifications. (1961, c. 1077, s. 7.)

§ 115-313. Local programs; submission for approval; allotment of funds; teachers; joint programs.—The superintendent of any school administrative unit may submit to the Director a proposal, including any program already in operation, for a local program for the education of the exceptionally talented children in that administrative unit. If such proposal is approved by the Director, in accordance with rules and regulations to be prescribed by the State Board, for qualification of local programs under this article, there shall be allocated by the State Board out of the Nine Months School Fund, to the school administrative unit such funds as may be necessary to carry out the program. Such programs may include additional teachers, special materials and books, plans for identifying and guiding exceptionally talented students, or other items of excess cost not properly borne by the local unit, provided that the amount allocated shall not exceed

a maximum amount for each participant pupil to be fixed by the State Board. Teachers for such approved local programs may be allotted out of the teachers provided for the Nine Months School Fund, provided such allotment may be in addition to the regular teacher allotment to the administrative unit involved. Two or more administrative units may join together for the purpose of operating such a program, under the direction of the Division for the Education of Exceptionally Talented Children. (1961, c. 1077, s. 8.)

§ 115-314. Programs in pilot centers. — Demonstrative programs for the education of exceptionally talented children in five pilot centers throughout the State shall be continued under the supervision of the Director for the school year 1961-1962, the excess expense of such pilot centers over and above local expenditure to be borne by the State out of the appropriation provided in this article. The Director shall recommend rules and regulations subject to approval of the State Board, for the reimbursement of such excess expense. Subsequent to the school year 1961-1962, the Director shall, with the approval of the State Board, determine whether pilot centers shall continue to be operated, and if so, the number, location, and manner of operation thereof; provided that these pilot centers shall be representative of the various conditions and geographic areas throughout the State. (1961, c. 1077, s. 9.)

Editor's Note.—The appropriation referred to in this section appeared in section 10 of the act from which this article was derived, that is, chapter 1077, Session Laws 1961.

§ 115-315. Programs financed out of local funds not affected.—Nothing in this article shall prohibit or interfere with the operation in a local school administrative unit of any program for exceptionally talented children not qualifying for the State funds provided in § 115-313, but which is financed out of local funds. (1961, c. 1077, s. 11.)

ARTICLE 39.

Voluntary Endowment Funds for Public Schools.

§ 115-316. Creation of endowment funds; administration. — Any county or city board of education is hereby authorized and empowered upon the passage of a resolution to create and establish a permanent endowment fund which shall be financed by gifts, donations, bequests or other forms of voluntary contributions. Any endowment fund established under the provisions of this article shall be administered by the members of such board of education who, ex officio, shall constitute and be known as "The Board of Trustees of the Endowment Fund of the Public Schools of County or City or Town" (in which shall be inserted the name of the county, city or town). The board of trustees so established shall determine its own organization and methods of procedure. (1961, c. 970.)

§ 115-317. Boards of trustees public corporations; powers and authority generally; investments.—Any board of trustees created and organized under this article shall be a body politic, public corporation and instrumentality of government and as such may sue and be sued in matters relating to the endowment fund and shall have the power and authority to acquire, hold, purchase and invest in all forms of property, both real and personal, including, but not by way of limitation, all types of stocks, bonds, securities, mortgages and all types, kinds and subjects of investments of any nature and description. The board of trustees of said endowment fund may receive pledges, gifts, donations, devises and bequests, and may in its discretion retain such in the form in which they are made, and may use the same as a permanent endowment fund. The board of trustees of any endowment fund created hereunder shall have the

power to sell any property, real, personal or choses in action, of the endowment fund, at either public or private sale. The board of trustees shall be responsible for the prudent investment of any funds or moneys belonging to the endowment fund in the exercise of its sound discretion without regard to any statute or rule of law relating to the investment of funds by fiduciaries. (1961, c. 970.)

§ 115-318. **Expenditure of funds; pledges.**—It is not the intent that such endowment fund created hereunder shall take the place of State appropriations or any regular appropriations, tax funds or other funds made available by counties, cities, towns or school administrative units for the normal operation of the public schools. Any endowment fund created hereunder, or the income from same, shall be used for the benefit of the public schools of the county, city or town involved and to supplement regular and normal appropriations to the end that the public schools may improve and increase their functions, may enlarge their areas of service and may become more useful to a greater number of people. The board of trustees in its discretion shall determine the objects and purposes for which the endowment fund shall be spent. Nothing herein shall be construed to prevent the board of trustees of any such endowment fund established hereunder from receiving pledges, gifts, donations, devises and bequests and from using the same for such lawful school purposes as the donor or donors designate, provided, always, that the administration of any such pledges, gifts, donations, devises and bequests, or the expenditure of funds from same, will not impose any financial burden or obligation on the State of North Carolina or any subdivisions of government of the State. The board of trustees may with the consent of the donor of any pledges, transfer and assign such pledges as security for loans. This consent by the donor may be made at the time of the pledge or at anytime before said pledges are paid off in full. It is the purpose of this provision to enable the board of trustees to have the immediate use of funds which the donor may desire to pledge as payable over a period of years. (1961, c. 970.)

§ 115-319. **When only income from fund expended.** — Where the donor or donors of said pledges, gifts, donations, devises and bequests so provides, the board of trustees shall keep the principal of such gift or gifts intact and only the income therefrom may be expended. (1961, c. 970.)

§ 115-320. **Property and income of board of trustees exempt from State taxation.**—All property received, purchased, contributed or donated to the board of trustees for the benefit of any endowment fund created hereunder and all donations, gifts and bequests received or otherwise administered for the benefit of said endowment fund, as well as the principal and income from said endowment fund, shall at all times be free from taxation, of any nature whatsoever, within the State. (1961, c. 970.)

SUBCHAPTER XI. SPECIAL EDUCATIONAL INSTITUTIONS.

ARTICLE 40.

State School for the Blind.

§ 115-321. **Incorporation, name and management.** — The institution for the education of the deaf and dumb and the blind, located in the city of Raleigh, shall be a corporation under the name and style of the State School for the Blind and the Deaf, and shall be under the management of a board of directors and superintendent: Provided that the board of directors and the superintendent of said institution are hereby authorized to change the name of said institution from the "State School for the Blind and the Deaf" to some other name that will completely eliminate the words "blind" and "deaf" from the name

of said institution. (1881, c. 211, s. 1; Code, s. 2227; Rev., s. 4187; 1917, c. 35, s. 1; C. S., s. 5872; 1957, c. 1434; 1963, c. 448, s. 28.)

Editor's Note. — This article formerly appeared as §§ 116-105 to 116-119. It was transferred to its present position by Session Laws 1963, c. 448, s. 28, effective July 1, 1963.

The 1957 amendment added the proviso.

Cited in *Hass v. Hass*, 195 N. C. 734, 143 S. E. 541 (1928).

§ 115-322. Directors; appointment; terms; vacancies.—There shall be eleven (11) directors of the School for the Blind and Deaf at Raleigh, to be appointed by the Governor. Within thirty days from March 10, 1925, the Governor shall appoint six (6) directors and within six months from March 10, 1925, the Governor shall appoint five (5) directors. At the time of making the appointment the Governor shall designate which of the present members of the board are to be succeeded by his nominees and appointees. The terms of the directors shall be four years from their appointment and until their successors are appointed and qualified. The Governor shall fill all vacancies. The Governor shall transmit to the Senate at the next session of the General Assembly the names of his appointees for confirmation. The Governor shall have the power to remove any member of any of the board of directors whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (Code, s. 2228; 1899, cc. 311, 540; 1901, c. 707; 1905, c. 67; Rev., s. 4188; C. S., s. 5873; 1925, c. 306, ss. 10, 13, 14; 1963, c. 448, s. 28.)

Editor's Note. — The 1925 amendment decreased the term of directors from six to four years. There were formerly three

classes, appointed at intervals of two years. All are now appointed in the same year.

§ 115-323. President, executive committee, and other officials; election, terms, and salaries.—The board of directors shall organize by electing one of its number president and three an executive committee. The terms of office in each case shall be for two years. The board shall elect a superintendent, who shall be ex officio secretary of the board, and whose term of office shall be for three years; also a steward and a physician whose terms of office shall be for two years; and such officers, agents, and teachers as shall be deemed necessary. The compensation for officers and agents and teachers, mentioned in this section, shall be fixed by the board, and shall not be increased nor reduced during their term of service. The board shall have power to erect any buildings necessary, make improvements, and in general do all matters and things which may be beneficial to the good government of the institution, and to this end may make bylaws for the government of the same. The board of directors may term the head teacher of the white department "principal," and the chief officer of the colored department "principal of the colored department." (1881, c. 211, s. 3; Code, s. 2229; Rev., s. 4189; 1917, c. 35, ss. 1, 2; C. S., s. 5874; 1963, c. 448, s. 28.)

§ 115-324. Meetings of the board and compensation of the members.—The board shall meet at stated times and also at such other times as it may deem necessary. The members of the board shall be paid traveling expenses incurred in the discharge of their official duties, and shall also be paid the same per diem on account of attending meetings of the board as is provided for boards of other State institutions, from time to time, in the biennial appropriation acts. (1881, c. 211, s. 4; Code, s. 2230; Rev., s. 4190; C. S., s. 5875; 1943, c. 608, s. 1; 1963, c. 448, s. 28.)

Editor's Note. — The 1943 amendment rewrote the section and added the provi-

sion for payment of per diem compensation.

§ 115-325. Admission of pupils; how admission obtained. — The board of directors shall, on application receive in the institution for the purpose

of education, in the main department, all white blind children, and in the department for colored all colored deaf-mutes and blind children, residents of this State, not of confirmed immoral character, nor imbecile, nor unsound in mind, nor incapacitated by physical infirmity for useful instruction, who are between the ages of seven and twenty-one years: Provided, that pupils may be admitted to said institution who are not within the age limits above set forth, in cases in which the board of directors find that the admission of such pupils will be beneficial to them and in cases in which there is sufficient space available for their admission in said institution: Provided, further, that the board of directors is authorized to make expenditures, out of any scholarship funds or other funds already available or appropriated, of sums of money for the use of out of State facilities for any student who, because of peculiar conditions of race or disability, cannot be properly educated at the School in Raleigh. (1881, c. 211, s. 5; Code, s. 2231; Rev., s. 4191; 1917, c. 35, s. 1; C. S., s. 5876; 1947, c. 375; 1949, c. 507; 1953, c. 675, s. 14; 1963, c. 448, s. 28.)

Editor's Note. — The 1947 amendment rewrote this section. The 1949 amendment added the last proviso.

The 1953 amendment inserted "of" before the words "sums of money" in the second proviso.

§ 115-326. Admission of curable blind.—The directors of the institution for the blind, in the city of Raleigh, shall set apart space in said institution for the use of the curable blind who, by reason of poverty, are unable to pay for treatment. It shall be the duty of the directors of the institution for the blind in Raleigh to admit into such institution from time to time, such of the blind of the State as they may deem to be curable. (1895, c. 461; Rev., s. 4192; C. S., s. 5877; 1963, c. 448, s. 28.)

§ 115-327. Admission of pupils from other states.—The board may, on such terms as they deem proper, admit as pupils persons of like infirmity from any other state: Provided, such power shall not be exercised to the exclusion of any child of this State, and the person so admitted shall not acquire the condition of a resident of the State by virtue of such pupilage. (1881, c. 211, s. 6; Code, s. 2232; Rev., s. 4193; C. S., s. 5878; 1963, c. 448, s. 28.)

§ 115-328. Board may confer degrees. — The board may, upon the recommendation of the superintendent and faculty, confer such degree or marks of literary distinction as may be thought best to encourage merit. (1881, c. 211, s. 7; Code, s. 2233; Rev., s. 4194; 1917, c. 35, s. 1; C. S., s. 5879; 1963, c. 448, s. 28.)

§ 115-329. Election of officers. — The board of directors shall, on the second Monday in May, one thousand nine hundred and five, and every three years thereafter, elect an officer to be styled superintendent. They may elect all officers and teachers at the same time. The terms of office of the superintendent and the steward shall begin June 1st, and the terms of all other officers and teachers shall begin September first, and for the periods named in this article. The superintendent shall be a man of good moral character, and shall have such experience and training as in the opinion of the board of directors shall qualify such person for this position. He shall have charge of the institution in all its departments, and shall do and perform such duties and exercise such supervision as is incumbent upon such officer. (1881, c. 211, s. 8; Code, s. 2234; 1889, c. 539; 1893, c. 137; 1901, c. 707, s. 2; Rev., s. 4195; 1917, c. 35, s. 1; C. S., s. 5880; 1943, c. 425; 1963, c. 448, s. 28.)

Editor's Note. — The 1943 amendment struck out the words "and shall have experience as a teacher in the Deaf, Dumb, and Blind School of North Carolina, or some similar institution, for the term of two or more years" formerly appearing in

this section, and inserted in lieu thereof the following: "and shall have such experience and training as in the opinion of the board of directors shall qualify such person for this position."

§ 115-330. **State Treasurer is ex officio treasurer of institution.**—The State Treasurer shall be ex officio treasurer of the institution. He shall report to the Board at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. (1881, c. 211, s. 9; Code, s. 2235; Rev., s. 4196; C. S., s. 5881; 1963, c. 448, s. 28.)

§ 115-331. **Reports of board to Governor.**—The board shall make a report to the Governor on the first of January next before the regular meeting of the General Assembly, showing the condition of the institution in its various departments, and shall give any information the Governor shall desire from time to time. (1881, c. 211, s. 9; Code, s. 2235; Rev., s. 4196; C. S., s. 5882; 1963, c. 448, s. 28.)

§ 115-332. **Removal of officers.**—The board shall have power to remove any officer, employee, or teacher for gross immorality, willful neglect of duty, or any good and sufficient cause; but in any such case notice in writing of the charges shall be served on the accused, proved, and entered on record. The board shall fill all vacancies which may occur from any cause. (1881, c. 211, s. 10; Code, s. 2236; Rev., s. 4197; C. S., s. 5883; 1963, c. 448, s. 28.)

§ 115-333. **Employees.**—The superintendent, subject to the control of the board, shall have power to employ all employees and fix their compensation, and to discharge them at pleasure. (1881, c. 211, s. 11; Code, s. 2237; Rev., s. 4198; 1917, c. 35, s. 1; C. S., s. 5884; 1963, c. 448, s. 28.)

§ 115-334. **When clothing, etc., for pupils paid for by county.**—Where it shall appear to the satisfaction of the director of public welfare and the chairman of the board of county commissioners that the parents of any deaf or blind child of the county are then unable to provide such child with clothing and/or traveling expenses to and from the State School for the Blind and the Deaf, and the North Carolina School for the Deaf, or where such child has no living parent, or any estate of its own, or any person, or persons, upon which it is legally dependent who are able to provide expenses provided for herein, then upon the demand of the institution which such child attends or has been accepted for attendance, said demand being made through the State Auditor, the board of county commissioners of the county in which such child resides shall issue or cause to be issued, its warrant payable to the State Auditor, same to be credited to the proper institution, for the payment of an amount sufficient to clothe and pay traveling expenses of said child; provided, that the amount, in no case, shall exceed forty-five dollars (\$45.00) per annum for each child, in addition to such amounts as may be necessary to defray the actual traveling expenses to and from said institution. For such amount so furnished, the parents, or other person upon whom such child is, or may be, legally dependent, and such child, shall be and remain liable for the payment thereof, together with 5% per annum interest thereon from the date of each payment by the county. At any time after any of such payments, in the discretion of the board of commissioners, or any succeeding board, a suit may be instituted in some court of competent jurisdiction in said county, or in any other county in the State according to the venue now or hereafter fixed by law for the recovery of the same, which suit shall be prosecuted by the person who may now or hereafter perform the duties of county attorney, and the parents of such child shall be liable therefor jointly and severally, and all other persons who are made liable therefor herein shall be liable severally for such amounts and interest and the cost of suit. (1879, c. 332, s. 1; Code, s. 2238; Rev., s. 4199; Ex. Sess. 1908, c. 69; 1917, c. 35, s. 3; 1919, c. 183; C. S., s. 5885; 1927, c. 86; 1929, c. 181; 1961, c. 186; 1963, c. 448, s. 28.)

Editor's Note.—The 1961 amendment substituted "director" for "superintendent" near the beginning of the first sentence.

§ 115-335. **Title to farm vested in directors.**—The farm of one hundred acres, now held by the said School, west of the city of Raleigh, shall be held in fee simple by the board of directors of said institution, to be improved, or used, or disposed of, or exchanged for lands more convenient, as the best interests of the said institution, in its judgment, may require or demand. (1901, c. 707, s. 3; Rev., s. 4201; C. S., s. 5886; 1963, c. 448, s. 28.)

ARTICLE 41.

State Schools for the Deaf.

§ 115-336. **Incorporation, name and location.** — There shall be maintained a school for the white deaf children of the State which shall be a corporation under the corporate name of the North Carolina School for the Deaf, to be located upon the grounds donated for that purpose near the town of Morganton. The North Carolina School for the Deaf shall be classed and defined as an educational institution: Provided that the board of directors and the superintendent of said institution are hereby authorized to change the name of said institution to some other name that will completely eliminate the word “deaf” from the name of said institution. (1891, c. 399, s. 1; Rev., s. 4202; 1915, c. 14; C. S., s. 5888; 1957, c. 1433; 1963, c. 448, s. 28.)

Editor’s Note. — This section formerly appeared as § 116-120. It was transferred to its present position by Session Laws 1963, c. 448, s. 28, effective July 1, 1963. The 1957 amendment added the proviso.

§ 115-337. **Incorporation and location of Eastern North Carolina School for the Deaf.**—There is hereby established and there shall be maintained a school for the deaf of this State which shall be a corporation under the corporate name of the Eastern North Carolina School for the Deaf.

As soon as practicable after its appointment as hereinafter provided for the North Carolina Directors of Schools for the Deaf shall meet with the Governor and consider sites, including the proposed site at Wilson, North Carolina, together with any other sites in Eastern North Carolina which may be offered as a location for the school. From all sites offered, the Governor and the North Carolina Directors of Schools for the Deaf shall designate that site considered most suitable as the location for the Eastern North Carolina School for the Deaf, and such school shall thereafter be known as the “North Carolina School for the Deaf at” (1961, c. 968; 1963, c. 448, s. 28.)

Editor’s Note. — This section formerly appeared as § 116-125.1. It was transferred to its present position by Session Laws 1963, c. 448, s. 28, effective July 1, 1963.

§ 115-338. **Control and management by board of directors; composition; appointment, term and removal of members; vacancies.** — The North Carolina School for the Deaf at Morganton and the Eastern North Carolina School for the Deaf shall be under the control and management of a board of directors consisting of eleven (11) members known as the North Carolina Directors of Schools for the Deaf. The said board of directors, to be known as North Carolina Directors of Schools for the Deaf, shall be constituted and composed as follows: The Governor of North Carolina, within thirty days after June 17, 1961, shall appoint eleven (11) members or directors for terms of four (4) years each from and after the date of their appointment, and these eleven (11) members shall constitute the North Carolina Directors of Schools for the Deaf. All directors appointed as herein provided shall hold office until their successors are appointed and qualified. The Governor of North Carolina shall fill all vacancies in office of said directors arising because of death, resignation or any reason whatsoever. As soon as the Governor of North Carolina has appointed all directors, as herein provided, to serve as North Carolina Directors

of Schools for the Deaf, the Board of Directors of the North Carolina School for the Deaf at Morganton shall cease to exist and the general control, administration and supervision of the Eastern North Carolina School for the Deaf and the North Carolina School for the Deaf at Morganton shall be under the authority of the North Carolina Directors of Schools for the Deaf as herein constituted. The Governor shall transmit to the General Assembly at its next regular session the names of his appointees for confirmation but the appointees of the Governor shall have the right to serve and act as said directors until their names are presented to the General Assembly for confirmation. The Governor shall have the power to remove any member of the board of directors whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (1961, c. 968; 1963, c. 448, s. 28.)

Editor's Note. — This section formerly appeared as § 116-125.2. It was transferred to its present position by Session Laws 1963, c. 448, s. 28, effective July 1, 1963.

§ 115-339. Organization of board; election and salaries of superintendents, officers, teachers and agents; application of State Personnel Act.—The board of directors shall organize by appointing one of its number president and three an executive committee, who shall hold office for two years; they shall elect a superintendent for each school whose terms of office shall be three years, and such other officers, teachers, and agents as shall be deemed necessary, and shall fix the compensation of same. Notwithstanding any other provisions of this article, the personnel of the Eastern North Carolina School for the Deaf and the North Carolina School for the Deaf at Morganton shall be subject to all of the provisions of the State Personnel Act, the same being article 2 of chapter 143 of the General Statutes. (1961, c. 968; 1963, c. 448, s. 28; c. 1011.)

Editor's Note. — This section formerly appeared as § 116-125.3. It was transferred to its present position by Session Laws 1963, c. 448, s. 28, effective July 1, 1963. Session Laws 1963, c. 1011, added the second sentence.

§ 115-340. Qualifications of superintendents; powers and duties generally.—The superintendents shall be teachers of knowledge, skill, and ability in their profession and experience in the management and instruction of the deaf. They shall possess good executive ability and shall be the chief executive officers of the institutions. They shall devote their whole time to the supervision of the institution, and shall see that the pupils are properly instructed in the branches of learning and industrial pursuits as provided for in this article, and under the supervision of the board. The board shall elect all teachers and subordinate officers by and with the consent and recommendation of the superintendents. (1961, c. 968; 1963, c. 448, s. 28.)

Editor's Note. — This section formerly appeared as § 116-125.3. It was transferred to its present position by Session Laws 1963, c. 448, s. 28, effective July 1, 1963.

§ 115-341. Pupils admitted; education.—The board of directors shall, according to such reasonable regulations as it may prescribe, on application, receive into the school for the purposes of education all white deaf children resident of the State not of confirmed immoral character, nor imbecile or unsound in mind or incapacitated by physical infirmity for useful instruction, who are between the ages of six and twenty-one years: Provided, that the board of directors may audit students under the age of six years when, in its judgment, such admission will be for the best interest of the applicant and the facilities of the school permit such admission. Only those who are bona fide citizens and/or residents of North Carolina shall be eligible to and entitled to receive free tuition and maintenance. The board of directors may fix charges and prescribe rules

whereby nonresident deaf children may be admitted, but in no event shall the admission of nonresidents in any way prevent the attendance of any eligible deaf child, resident of North Carolina. The board shall provide for the instruction of all pupils in the branches of study now prescribed by law for the public schools of the State and in such other branches as may be of special benefit to the deaf. As soon as practicable, the boys shall be instructed and trained in such mechanical pursuits as may be suited to them, and in practical agriculture and subjects relating thereto; and the girls shall be instructed in sewing, housekeeping, and such arts and industrial branches as may be useful to them in making themselves self-supporting. (1961, c. 968; 1963, c. 448, s. 28.)

Editor's Note. — This section formerly appeared as § 116-125.5. It was transferred to its present position by Session Laws 1963, c. 448, s. 28, effective July 1, 1963.

§ 115-342. Free textbooks and State purchase and rental system.—The North Carolina School for the Deaf, at Morganton, North Carolina, shall have the right and privilege of participating in the distribution of free textbooks and in the purchase and rental system operated by the State of North Carolina in the same manner as any other public school in said State. (1943, c. 205; 1963, c. 448, s. 28.)

Editor's Note. — This section formerly appeared as § 116-124.1. It was transferred to its present position by Session Laws 1963, c. 448, s. 28, effective July 1, 1963.

§ 115-343. Powers of board.—The board shall have power to make such bylaws, rules, and regulations, not inconsistent with the laws of the State, as may be necessary for the proper management of said school and its officers; and shall conduct the school in such way, as far as practicable, as to make it self-sustaining. The board is further authorized to make such arrangements with the board of directors of Broughton Hospital as may be agreed upon to promote convenience and economy for joint water supply and lighting arrangements. (1891, c. 399, ss. 8, 9, 10; Rev., s. 4205; C. S., s. 5893; 1963, c. 448, s. 28.)

Editor's Note. — This section formerly appeared as § 116-125. It was transferred to its present position by Session Laws 1963, c. 448, s. 28, effective July 1, 1963. By virtue of Session Laws 1959, c. 1028, s. 3, "Broughton Hospital" has been substituted for "the State Hospital at Morganton."

ARTICLE 42.

Central Orphanage of North Carolina.

§ 115-344. Creation; powers.—The corporation created by chapter forty-seven, Private Laws of one thousand eight hundred and eighty-seven, is hereby continued as a body corporate for a period of sixty years from March 8, 1927, under the name and style of "The Central Orphanage of North Carolina." The said corporation shall have power to receive, purchase, and hold property, real and personal, not to exceed in value one million dollars, to sue and be sued, to plead and be impleaded, to receive gifts, donations and appropriations, to contract and be contracted with, and to do all other acts usual and necessary in the conduct of such corporation, and to carry out the intent and purposes thereof under and as subscribed by the laws of North Carolina. (1927, c. 162, s. 1; 1963, c. 448, s. 28; 1965, c. 617, s. 2.)

Editor's Note. — This article formerly appeared as §§ 116-138 to 116-142. It was transferred to its present position by Session Laws 1963, c. 448, s. 28, effective July 1, 1963. The 1965 amendment, effective July 1, 1965, substituted "The Central Orphanage of North Carolina" for "The Colored Orphanage of North Carolina."

§ 115-345. Directors; selection, self-perpetuation, management of corporation.—M. F. Thornton, Reverend M. C. Ransom, J. W. Levy, J. C.

Jeffreys, J. E. Shepard, N. A. Cheek, Alex Peace and Reverend G. C. Shaw are hereby named and appointed as members of the board of directors of said "The Central Orphanage of North Carolina." The Governor of North Carolina shall appoint five white citizens of Granville County as members of said board of directors, and the thirteen so named shall constitute the board of directors of said corporation. Said board of directors shall organize by the election of a president and secretary, shall make all necessary bylaws and regulations for the convenient and efficient management and control of the affairs of said corporation, including the method by which successors to the directors herein named shall be chosen. (1927, c. 162, s. 2; 1963, c. 448, s. 28; 1965, c. 617, s. 2.)

Editor's Note.—The 1965 amendment, "The Colored Orphanage of North Carolina," effective July 1, 1965, substituted "The Central Orphanage of North Carolina" for

§ 115-346. Board of trustees; appropriations; treasurer; board of audit.—The five members of said board of directors so appointed by the Governor shall also serve as a board of trustees of said "The Central Orphanage of North Carolina." The said board of trustees so appointed shall serve for a term of four years and until their successors are chosen. All appropriations made by the General Assembly to the said "The Central Orphanage of North Carolina" shall be under the control of the board of trustees, and said appropriations shall be expended under their supervision and direction. The board of trustees shall select one of their members as a treasurer of the fund appropriated to the institution by the General Assembly and also not more than two persons to act as a board to audit the expenditure of such appropriation. The treasurer shall receive a salary of one hundred dollars per year for his services and members of the board of audit a salary not to exceed one hundred and fifty dollars per year. The treasurer shall give a bond payable to the State of North Carolina in a surety company in such sum as the board of trustees may require, the annual premium to be paid out of the funds of the said Orphanage. (1927, c. 162, s. 3; 1963, c. 448, s. 28; 1965, c. 617, s. 2.)

Editor's Note.—The 1965 amendment, "The Colored Orphanage of North Carolina," effective July 1, 1965, substituted "The Central Orphanage of North Carolina" for

§ 115-347. Training of orphans. — The said corporation shall receive, train and care for such colored orphan children of the State of North Carolina as under the rules and regulations of said corporation may be deemed practical and expedient, and impart to them such mental, moral and industrial education as may fit them for usefulness in life. (1927, c. 162, s. 4; 1963, c. 448, s. 28.)

§ 115-348. Control over orphans. — The said corporation shall have power to secure the control of such orphans by the written consent of those nearest akin to them or of those having control of such orphans, and shall receive such others as may be committed to its care under the appropriate laws of the State; and it shall be unlawful for any person or persons to interfere in any way with said corporation in the management of such orphans after they shall have been entered and received by it. The board of directors shall make all necessary rules and regulations for the reception and discharge of children from said Orphanage. (1927, c. 162, s. 5; 1963, c. 448, s. 28.)

Chapter 115A.

Community Colleges, Technical Institutes, and Industrial Education Centers.

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ARTICLE 1.

General Provisions for State Administration.

§ 115A-1. **Statement of purpose.**—The purposes of this chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. (1963, c. 448, s. 23.)

Editor's Note.—The act inserting this chapter became effective July 1, 1963.

§ 115A-2. **Definitions.**—As used in this chapter:

- (1) The term "State Board of Education" refers to the State Board of Education as established and described in article IX, § 8, of the Constitution of North Carolina.
- (2) The term "community college" is defined as an educational institution operating under the provisions of this chapter and dedicated primarily to the educational needs of the particular area for which established, and
 - a. which offers the freshman and sophomore courses of a college of arts and sciences,
 - b. which may offer organized curricula for the training of technicians,
 - c. which may offer vocational, trade, and technical specialty courses and programs, and
 - d. which may offer courses in general adult education.
- (3) The term "technical institute" is defined as an educational institution operating under the provisions of this chapter and dedicated primarily to the educational needs of the particular area for which established, and
 - a. which offers organized curricula for the training of technicians,
 - b. which may offer vocational, trade, and technical specialty courses and programs, and
 - c. which may offer courses in general adult education.
- (4) The term "industrial education center" is defined as an educational institution operating under the provisions of this chapter and dedicated primarily to the educational needs of the area for which established, and
 - a. which offers vocational, trade, and technical specialty courses and programs, and
 - b. which may offer courses in general adult education.
- (5) The term "institution" refers to a community college, a technical institute, or an industrial education center.
- (6) The "administrative area" of an institution comprises the county or counties directly responsible for the local financial support and local administration of such institution as provided in this chapter.
- (7) The "tax levying authority" of an institution is the board of commissioners of the county or all of the boards of commissioners of the counties, jointly, which constitute the administrative area of the institution. (1963, c. 448, s. 23.)

§ 115A-3. State Board of Education to establish department to administer system of educational institutions.—The State Board of Education is authorized to establish and organize a department to provide State-level administration, under the direction of the Board, of a system of community colleges, technical institutes, and industrial education centers, separate from the free public school system of the State. The Board shall have authority to adopt and administer all policies, regulations, and standards which it may deem necessary for the establishment and operation of the department. The personnel of the department shall be governed by the same policies as the personnel of the other departments of the Board of Education and shall be subject to the provisions contained in article 2, chapter 143 of the General Statutes; except the position of the director or chief administrative officer of the department shall be exempt from the provisions of the State Personnel Act, and the compensation of this position shall be fixed by the Governor, upon the recommendation of the State Board of Education, subject to approval by the Advisory Budget Commission.

The State Board of Education shall appoint an Advisory Council consisting of at least seven members to advise the Board on matters relating to personnel, curricula, finance, articulation, and other matters concerning institutional programs and coordination with other educational institutions of the State. Two members of the Advisory Council shall be members of the North Carolina Board of Higher Education or of its professional staff, and two members of the Advisory Council shall be members of the faculties or administrative staffs of institutions of higher education in this State. (1963, c. 448, s. 23.)

§ 115A-4. Establishment and transfer of institutions.—After the effective date of this chapter, the establishment of all community colleges, technical institutes, and industrial education centers shall be subject to the prior approval of the State Board of Education and each institution shall be established only in accordance with the provisions of this chapter and the regulations, standards, and procedures adopted by the Board not inconsistent herewith. In no case, however, shall approval be granted by the Board for the establishment of an institution until it has been demonstrated to the satisfaction of the Board that a genuine educational need exists within a proposed administrative area, that existing public and private post-high-school institutions in the area will not meet the need, that adequate local financial support for the institution will be provided, that public schools in the area will not be affected adversely by the local financial support required for the institution, and that funds sufficient to provide State financial support of the institution are available.

In approving the request of the board of trustees of an industrial education center for the establishment of an educational program, it shall be a matter of general policy of the State Board of Education to require that it be demonstrated to the satisfaction of the State Board of Education that the educational and occupational needs the proposed program is designed to meet are not already met by similar educational programs maintaining standards acceptable to the State Board of Education in other public or private schools in the administrative area of the industrial education center.

In approving the request of the board of trustees of an industrial education center for the establishment of an educational program, it shall be a matter of general policy of the State Board of Education to require that it be demonstrated to the satisfaction of the State Board of Education that the industrial education center is not assuming the continuing responsibility for providing for individual manufacturing firms or corporations the routine training required for regular operator training in the factories of the firm or corporation made necessary because of turnover of personnel.

The State Board of Education and the North Carolina Board of Higher Education shall co-operate in providing for the orderly transfer of the administration

and operation of College of the Albemarle, Mecklenburg College, and all other public community colleges designated by the General Assembly, from the provisions of article 3, chapter 116, of the General Statutes of North Carolina to the provisions of this chapter. Such transferal shall be accomplished as provided by this chapter and regulations and procedures adopted jointly by the two boards. The two boards shall also provide by regulation for the transfer, without consideration, of title to all property, funds, and unexpended appropriations of the colleges held heretofore by the boards of trustees of the colleges from such Boards to the respective boards of trustees established pursuant to this chapter.

Provision shall be made for the orderly transferal of the administration and operation of all industrial education centers from local boards of education of the State public school system to boards of trustees established pursuant to this chapter for the purpose of administering and operating such centers as provided in this chapter. Such transferal shall be accomplished as provided by this chapter and regulations and procedures adopted by the State Board of Education. Upon transferal of each industrial education center the local board of education previously operating the center shall transfer, without consideration, title to the property, funds, and unexpended appropriations heretofore held by such board for the center to the board of trustees established for the center pursuant to this chapter. Provided, if an industrial education center ceases to operate as an institution, as defined in this chapter, title to real property transferred to a board of trustees from the local board of education, previously operating the center, shall revert to such board of education, and said board of trustees shall thereupon, by proper instrument, convey the same to such board of education. Where plans are being made to relocate an existing industrial education center by moving it from buildings on or adjacent to a senior high school campus, the State Board of Education may designate the local board of education now operating the industrial education center as the board of trustees for the continued operation of the industrial education center until such time as the industrial education center is so relocated; and the board of trustees provided for in this chapter may be appointed to develop the new or reorganized institution but shall not have control of the existing industrial education center until it is transferred to the new site.

The approval of any new institution, or the conversion of any existing institution into a new type of institution, or the expenditures of any State funds for any capital improvements at existing institutions shall be subject to the prior approval of the Governor and the Advisory Budget Commission. The expenditure of State funds at any institution herein authorized to be approved by the Board shall be subject to the terms of the Executive Budget Act unless specifically otherwise provided in this chapter. (1963, c. 448, s. 23; 1965, c. 1028.)

Cross Reference. — As to the effective date of this chapter, see note to § 115A-1. **Editor's Note.** — The 1965 amendment added the last paragraph.

§ 115A-5. Administration of institutions by State Board of Education; personnel exempt from State Personnel Act; use of existing public school facilities.—The State Board of Education may adopt and execute such policies, regulations and standards concerning the establishment and operation of institutions as the Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

The State Board of Education shall establish standards and scales for salaries and allotments paid from funds administered by the Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The Board shall have authority with respect to individual institutions: To approve sites, buildings, building plans, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of de-

grees, diplomas, and certificates; to establish and regulate student tuition and fees and financial accounting procedures.

On petition of the board of education of the school administrative unit in which an institution is proposed to be established, the State Board of Education may approve the utilization by such proposed institution of existing public school facilities, if the Board finds:

- (1) That an adequate portion of such facilities can be devoted to the exclusive use of the institution, and
- (2) That such utilization will be consistent with sound educational considerations. (1963, c. 448, s. 23.)

§ 115A-6. Withdrawal of State support.—The State Board of Education may withdraw or withhold State financial and administrative support of any institutions subject to the provisions of this chapter in the event that:

- (1) The required local financial support of an institution is not provided;
- (2) Sufficient State funds are not available;
- (3) The officials of an institution refuse or are unable to maintain prescribed standards of administration or instruction; or
- (4) Local educational needs for such an institution cease to exist. (1963, c. 448, s. 23.)

ARTICLE 2.

Local Administration.

§ 115A-7. Each institution to have board of trustees; selection of trustees.—(a) Each community college and technical institute established or operated pursuant to this chapter shall be governed by a board of trustees consisting of twelve members, who shall be selected by the following agencies.

Group One—four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in § 115A-37.

Group Two—four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee.

Group Three—four trustees, appointed by the Governor.

(b) Each industrial education center established or operated pursuant to this chapter shall be governed by a board of trustees consisting of eight members, four of whom shall be selected by the agencies provided for Group One in subsection (a) above and four by the agencies provided for Group Two above.

(c) All trustees shall be residents of the administrative area of the institution for which they are selected or of counties contiguous thereto.

(d) Vacancies occurring in any group for whatever reason shall be filled for the remainder of the unexpired term by the agency or agencies authorized to select trustees of that group and in the manner in which regular selections are made. Should the selection of a trustee not be made by the agency or agencies having the authority to do so within sixty (60) days after the date on which a vacancy occurs, whether by creation or expiration of a term or for any other reason, the Governor shall fill the vacancy by appointment for the remainder of the unexpired term. (1963, c. 448, s. 23.)

§ 115A-8. Term of office of trustees.—Trustees shall serve for terms of eight (8) years, except that initially:

- (1) For all industrial education centers and technical institutes and for those

community colleges for which boards of trustees first shall be established pursuant to the provisions of this chapter, terms of the members of each board shall be so set by the selecting agencies that the term of a member in each group in § 115A-7 (a), shall expire on June 30 of every other year, the shortest term to expire on June 30 of the next odd-numbered year following the date the Board of trustees is established. Thereafter, all terms shall be eight (8) years and shall commence on July 1.

- (2) For those community colleges which hereafter shall be operated pursuant to this chapter but for which the boards of trustees have previously been appointed pursuant to the provisions of article 3, chapter 116, of the General Statutes, all trustees previously appointed and currently serving shall continue to serve until the expiration of their respective terms.

- a. As the terms of the four trustees previously appointed by the city and/or county boards of education expire, their successors shall be selected by the agencies specified for Group One in § 115A-7, so that a term shall expire on June 30 of every other year, the shortest term to expire on June 30 of the next odd-numbered year following the date the successors are appointed. Thereafter, all terms shall be eight (8) years and shall commence July 1.
- b. As the terms of the four trustees previously appointed by the governing board of the municipality and/or the board of commissioners expire, their successors shall be selected by the agencies specified for Group Two in § 115A-7, so that a term shall expire on June 30 of every other year, the shortest term to expire on June 30 of the next odd-numbered year following the date the successors are appointed. Thereafter, all terms shall be eight (8) years and shall commence on July 1.
- c. As the terms of the four trustees previously appointed by the Governor expire, their successors shall be appointed by the Governor, so that a term shall expire on June 30 of every other year, the shortest term to expire on June 30 of the next odd-numbered year following the date the successors are appointed. Thereafter, all terms shall be eight (8) years and shall commence on July 1. (1963, c. 448, s. 23.)

§ 115A-9. Board of trustees a body corporate; corporate name and powers; title to property.—The board of trustees of each institution shall be a body corporate with all powers usually conferred upon such bodies to enable it to acquire, hold, and transfer real and personal property, to enter into contracts, to institute and defend legal actions and suits, and to exercise such other rights and privileges as may be necessary for the management and administration of the institution and for carrying out the provisions and purposes of this chapter. The official title of each board shall be "The Trustees of" (filling in the name of the institution) and such title shall be the official corporate name of the institution.

The several boards of trustees shall hold title to all real and personal property donated to their respective institutions or purchased with funds provided by the tax levying authorities of their respective institutions. Title to equipment furnished by the State shall remain in the State Board of Education. In the event that an institution shall cease to operate, title to all real and personal property donated to the institution or purchased with funds provided by the tax levying authorities, except as provided for in § 115A-4, shall vest in the county in which the institution is located, unless the terms of the deed of gift in the case of donated property provides otherwise, or unless in the case of two or more coun-

ties forming a joint institution the contract provided for in § 115-37 provides otherwise. (1963, c. 448, s. 23.)

§ 115A-10. Trustees declared to be commissioners for special purpose.—All trustees of institutions in this chapter are declared to be commissioners for special purposes within the meaning of article XIV, § 7, of the Constitution of North Carolina. (1963, c. 448, s. 23.)

§ 115A-11. Compensation of trustees.—Trustees shall receive no compensation for their services but shall receive reimbursement, according to regulations adopted by the State Board of Education, for cost of travel, meals, and lodging while performing their official duties. (1963, c. 448, s. 23.)

§ 115A-12. Organization of boards; meetings. — At the first meeting after its selection, each board of trustees shall elect from its membership a chairman, who shall preside at all board meetings, and a vice-chairman, who shall preside in the absence of the chairman. The trustees shall also elect a secretary, who need not be a trustee, to keep the minutes of all board meetings. All three officers of the board shall be elected for a period of one year but shall be eligible for re-election by the board.

Each board of trustees shall meet as often as may be necessary for the conduct of the business of the institution but shall meet at least once every three (3) months. Meetings may be called by the chairman of the board or by the chief administrative officer of the institution. (1963, c. 448, s. 23.)

§ 115A-13. Removal of trustees.—Should the State Board of Education have sufficient evidence that any member of the board of trustees of an institution is not capable of discharging, or is not discharging, the duties of his office as required by law or lawful regulation, or is guilty of immoral or disreputable conduct, the Board shall notify the chairman of such Board of Trustees, unless the chairman is the offending member, in which case the other members of the board shall be notified. Upon receipt of such notice there shall be a meeting of the board of trustees for the purpose of investigating the charges, at which meeting a representative of the State Board of Education may appear to present evidence of the charges. The allegedly offending member shall be given proper and adequate notice of the meeting and the findings of the other members of the board shall be recorded, along with the action taken, in the minutes of the board of trustees. If the charges are, by an affirmative vote of two-thirds of the members of the board, found to be true, the board of trustees shall declare the office of the offending member to be vacant.

Nothing in this section shall be construed to limit the authority of a board of trustees to hold a hearing as provided herein upon evidence known or presented to it. (1963, c. 448, s. 23.)

§ 115A-14. Powers and duties of trustees.—The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this chapter and are delegated to it by the State Board of Education. Included in the powers granted to the trustees are the following:

- (1) To elect a president or chief administrative officer of the institution for such term and under such conditions as the trustees may fix, such election to be subject to the approval of the State Board of Education.
- (2) To elect or employ all other personnel of the institution upon nomination by the president or chief administrative officer, subject to standards established by the State Board of Education.
- (3) To purchase any land, easement, or right-of-way which shall be necessary for the proper operation of the institution, when such site has been approved by the State Board of Education, and, if necessary, to ac-

quire land by condemnation in the same manner and under the same procedures as provided in article 2, chapter 40 of the General Statutes. For the purpose of condemnation, the determination by the trustees as to the location and amount of land to be taken and the necessity therefor shall be conclusive.

- (4) To apply to the standards and requirements for admission and graduation of students and other standards established by the State Board of Education.
- (5) To receive and accept private donations, gifts, bequests, and the like and to apply them or invest any of them and apply the proceeds for purposes and upon the terms which the donor may prescribe and which are consistent with the provisions of this chapter and the regulations of the State Board of Education.
- (6) To provide all or part of the instructional services for the institution by contracting with other public or private educational institutions of the State, according to regulations and standards adopted by the State Board of Education.
- (7) To perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of all reasonable rules, regulations, and bylaws for the government and operation of the institution under this chapter and for the discipline of students. (1963, c. 448, s. 23.)

§ 115A-15. State Retirement System for Teachers and State Employees; social security.—Solely for the purpose of applying the provisions of chapter 135 of the General Statutes of North Carolina, "Retirement System for Teachers and State Employees, Social Security," the institutions of this chapter are included within the definition of the term "Public School," and the institutional employees are included within the definition of the term "Teacher," as these terms are defined in § 135-1. (1963, c. 448, s. 23.)

§ 115A-16. Workmen's Compensation Act applicable to institutional employees.—The provisions of chapter 97 of the General Statutes of North Carolina, the Workmen's Compensation Act, shall apply to all institutional employees. The State Board of Education shall make the necessary arrangements to carry out those provisions of chapter 97 which are applicable to employees whose wages are paid in whole or in part from State funds. The State shall be liable for compensation, based upon the average weekly wage as defined in the Act, of an employee regardless of the portion of such wage paid from other than State Funds.

The board of trustees of each institution shall be liable for workmen's compensation for employees whose salaries or wages are paid by the board entirely from local public or special funds. Each board of trustees is authorized to purchase insurance to cover such compensation liability and to include the cost of insurance in the annual budget of the institution.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to institutions for any purpose, and such a person, firm, or corporation shall not be liable for the payment of any sum of money under the provisions of this section. (1963, c. 448, s. 23.)

§ 115A-17. Waiver of governmental immunity from liability for negligence of agents and employees of institutions; liability insurance.—The board of trustees of any institution, by obtaining liability insurance as provided in § 115A-35, is authorized to waive its governmental immunity from liability for the death or injury of person or for property damage caused by the negligence or tort of any agent or employee of the board of trustees when the agent

or employee is acting within the scope of his authority or the course of his employment. All automobiles, buses, trucks, or other motor vehicles intended primarily for use on the public roads and highways which are the property of a board of trustees shall be insured at all times with liability insurance as provided in § 115A-35. Governmental immunity shall be deemed to have been waived by the act of obtaining liability insurance, but only to the extent that the board is indemnified for the negligence or torts of its agents and employees and only as to claims arising after the procurement of liability insurance and while such insurance is in force. (1963, c. 448, s. 23.)

§ 115A-17.1. Purchase of annuity or retirement income contracts for employees.—Notwithstanding any provision of law relating to salaries and/or salary schedules for the pay of faculty members, administrative officers, or any other employees, of community colleges, technical institutes or industrial education centers, the board of trustees of any of the above institutions may authorize the business officer or agent of same to enter into annual contracts with any of the above officers, agents and employees which provide for a reduction in salary below the total established compensation or salary schedule for a term of one (1) year. The financial officer or agent shall use the funds derived from the reduction in the salary of the officer, agent or employee to purchase a non-forfeitable annuity or retirement income contract for the benefit of said officer, agent or employee. An officer, agent or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the officer, agent or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the State Board of Education and on forms prepared by the State Board of Education. Notwithstanding any other provisions of this section or law, the amount by which the salary of any officer, agent or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes. (1965, c. 366.)

ARTICLE 3.

Financial Support.

§ 115A-18. State financial support of institutions. — (a) The State Board of Education shall be responsible for providing from sources available to the Board funds to meet the financial needs of institutions, as determined by policies and regulations of the Board, for the following budget items:

- (1) Capital outlay: Furniture and equipment for administrative and instructional purposes, new library books, and other items of capital outlay approved by the Board. Provided, the State Board of Education may, on an equal matching fund basis from appropriations made by the State for the purpose, grant funds to individual community colleges and technical institutes, including those converted from industrial education centers, for the purchase, construction and remodeling of institutional buildings determined by the State Board of Education to be necessary for the instructional programs or administration of such institutions. For the purpose of determining amounts of matching State funds, local funds shall include local expenditures made prior to the enactment of this chapter or prior to an institution becoming a community college or technical institute pursuant to the provisions of this

chapter, when such expenditures were made for the purchase, construction, and remodeling of institutional buildings subsequently determined by the State Board of Education to be necessary as herein specified, and provided such local expenditures have not previously been used as the basis for obtaining matching State funds under the provisions of this chapter or any other laws of the State. The State Board of Education shall not grant funds in an aggregate amount in excess of five hundred thousand dollars (\$500,000) to any single institution for capital or permanent improvements, such maximum amount to include all matching State funds previously granted under the laws of this State to an institution for capital or permanent improvements.

(2) Current expenses:

a. General administration:

1. Salaries and travel of trustees and administrative staff.
2. Cost of bonding institutional employees for the protection of State funds and property.
3. Office expenses.
4. Other costs of general administration approved by the Board.

b. Instructional services:

1. Salaries and travel of instructional staff and clerical employees.
2. Instructional supplies and materials.
3. Commencement expenses.
4. Other costs of instructional services approved by the Board.

c. Maintenance of plant: Maintenance and replacement of furniture and equipment furnished by the State.

d. Fixed charges:

1. Employer's contributions to social security and State retirement funds for the portion of institutional employees' salaries paid from State and federal funds.
2. Cost of workmen's compensation for institutional employees paid in whole or in part from State or federal funds.

e. Auxiliary services:

1. Operation of libraries, including salaries and travel of staff; replacement of books; and costs of supplies, materials, periodicals, and newspapers.
2. Other costs of auxiliary services approved by the Board.

(b) The State Board of Education is authorized to accept, receive, use, or re-allocate to the institutions any federal funds or aids that have been or may be appropriated by the government of the United States for the encouragement and improvement of any phase of the programs of the institutions. (1963, c. 448, s. 23.)

§ 115A-19. Local financial support of institutions.—(a) The tax levying authority of each institution shall be responsible for providing, in accordance with the provisions of § 115A-20 or § 115A-21, as appropriate, adequate funds to meet the financial needs of the institutions for the following budget items:

- (1) Capital outlay: Acquisition of land; erection of all buildings; alterations and additions to buildings; purchase of automobiles, buses, trucks, and other motor vehicles; purchase of all equipment necessary for the maintenance of buildings and grounds and operation of plant; and purchase of all furniture and equipment not provided for administrative and instructional purposes.

(2) Current expenses:

a. General administration:

1. Cost of bonding institutional employees for the protection of local funds and property.
2. Cost of auditing local funds.
3. Cost of elections held in accordance with §§ 115A-20 and 115A-22.
4. Legal fees incurred in connection with local administration and operation of the institution.

b. Operation of plant:

1. Wages of janitors, maids, and watchmen.
2. Cost of fuel, water, power, and telephones.
3. Cost of janitorial supplies and materials.
4. Cost of operation of motor vehicles.
5. Any other expenses necessary for plant operation.

c. Maintenance of plant:

1. Cost of maintenance and repairs of buildings and grounds.
2. Salaries of maintenance and repair employees.
3. Maintenance and replacement of furniture and equipment provided from local funds.
4. Maintenance of plant heating, electrical, and plumbing equipment.
5. Maintenance of all other equipment, including motor vehicles, provided by local funds.
6. Any other expenses necessary for maintenance of plant.

d. Fixed charges:

1. Rental of land, buildings, and equipment.
2. Cost of insurance for buildings, contents, motor vehicles, workmen's compensation for institutional employees paid from local funds, and other necessary insurance.
3. Employer's contribution to retirement and social security funds for that portion of institutional employees' salaries paid from local funds.
4. And any tort claims awarded against the institution due to the negligence of institutional employees.

(b) The board of trustees of each institution may apply local public funds provided in accordance with § 115A-20 (a) or § 115A-21 (a), as appropriate, or private funds, or both, to the supplementation of items of the current expense budget financed from State funds, provided a supplemental current expense budget is submitted in accordance with § 115A-27 (3). (1963, c. 448, s. 23.)

§ 115A-20. Providing local public funds for institutions established under this chapter; elections.—(a) Except as provided in § 115A-21, the tax levying authority of an institution may provide for local financial support of the institution as follows:

- (1) By appropriations from nontax revenues in a manner consistent with the County Fiscal Control Act, provided the continuing authority to make such appropriations shall have been approved by a majority of the qualified voters of the administrative area who shall vote on the question in an election held for such purpose, and/or
- (2) By a special annual levy of taxes within a maximum annual rate which maximum rate shall have been approved by a majority of the qualified voters of the administrative area who shall vote on the question of establishing or increasing the maximum annual rate in an election held for such purpose; and

- (3) By issuance of bonds, in the case of capital outlay funds, provided that each issuance of bonds shall be approved by a majority of the qualified voters of each county of the administrative area who shall vote on the question in an election held for that purpose. All bonds shall be subject to the Local Government Act and shall be issued pursuant to the County Finance Act. For the purpose of county debt limitations provided in that act, bonds issued for the purpose of this chapter shall be considered to be "for other than school purposes" as that term is used in §§ 153-84 and 153-87.

(b) At the election on the question of approving authority of the board of commissioners of each county in an administrative area (the tax levying authority) to appropriate funds from nontax revenues and/or a special annual levy of taxes, the ballot furnished the qualified voters in each county may be worded substantially as follows: "For the authority of the board of commissioners to appropriate funds either from nontax revenues or from a special annual levy of taxes not to exceed an annual rate of cents per one hundred dollars (\$100.00) of assessed property valuation, or both, for the financial support of (name of the institution)" plus any other pertinent information and "Against the authority of the board of commissioners, etc.," with a square before each proposition, in which the voter may make a cross mark (X), but any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this section.

(c) The question of approving authority to appropriate funds and/or to levy special taxes and the question of approving an issue of bonds, when approval of each shall be necessary for the establishment or conversion of an institution, shall be submitted at the same election.

(d) All elections shall be held in the same manner as elections held under article 9, chapter 153, of the General Statutes of North Carolina, the County Finance Act, and may be held at any time fixed by the tax levying authority of the administrative area or proposed administrative area of the institution for which such election is to be held.

(e) The State Board of Education shall ascertain that authority to provide adequate funds for the establishment and operation of an institution has been approved by the voters of a proposed administrative area before granting final approval for the establishment of an institution. (1963, c. 448, s. 23.)

§ 115A-21. Providing local public funds for institutions previously established.—(a) For counties in which, immediately prior to the enactment of this chapter, there was in operation or authorized a public community college or industrial education center which hereafter shall be operated pursuant to the provisions of this chapter, the following provisions shall apply in providing local financial support for each such institution:

- (1) Community colleges: The board of commissioners of a county in which is located a public community college heretofore operated or authorized to operate pursuant to article 3, chapter 116, of the General Statutes of North Carolina, may continue to levy special taxes annually for the local financial support of the college provided in § 115A-19, to the maximum rate last approved by the voters of the county in accordance with the above article. The board of commissioners may also provide all or part of such funds by appropriations, in a manner consistent with the County Fiscal Control Act, from nontax revenues. The question of increasing the maximum annual rate of a special tax may be submitted at an election held in accordance with the provisions of § 115A-20 (d) and the appropriate provisions of § 115A-22.
- (2) Industrial education centers: The board of commissioners of a county in which is located an industrial education center heretofore operated

or authorized to operate as part of the public school system and which hereafter shall be operated as an industrial education center or technical institute as defined in this chapter, may levy special taxes annually at a rate sufficient to provide funds for the financial support of the center or institute required by § 115A-19 (a). The board of commissioners may also provide all or part of such funds by appropriations, in a manner consistent with the County Fiscal Control Act, from nontax revenues. The board of commissioners is authorized to provide additional funds, either by special tax levies or by appropriations from nontax revenues, or both, to an amount equal to that required to be provided above, for the purpose of supplementing the current expense budget of the center or institute financed from State funds.

(b) The board of commissioners of a county in which is located one of the above public community colleges or industrial education centers may provide funds for capital outlay for such institution by the issuance of bonds. All bonds shall be issued in accordance with the appropriate provisions of §§ 115A-20 and 115A-22.

(c) Public funds provided a community college or industrial education center prior to its becoming subject to the provisions of this chapter and which remain to the credit of the institution upon its becoming subject to these provisions, shall be expended only for the purposes prescribed by law when such funds were provided the institution. (1963, c. 448, s. 23; 1965, c. 842, s. 1.)

Editor's Note. — The 1965 amendment made subdivision (2) of subsection (a) applicable to technical institutes.

Section 2, c. 842, Session Laws 1965, provides: "All expenditures of funds here-

tofore expended by counties for local financial support for institutions which have been converted from industrial education centers to a technical institute are hereby ratified, validated and confirmed."

§ 115A-22. Requests for elections to provide funds for institutions.

—(a) Formal requests for elections on the question of authority to appropriate nontax revenues and/or levy special taxes and to issue bonds, when such elections are to be held for the purpose of establishing an institution shall be originated and submitted only in the following manner:

- (1) Proposed multiple-county administrative areas: Formal requests for elections may be submitted jointly by all county boards of education in the proposed administrative area, or by petition of fifteen per cent (15%) of the number of qualified voters of the proposed area who voted in the last preceding election for Governor, to the boards of commissioners of all counties in the proposed area, who may fix the time for such election by joint resolution which shall be entered in the minutes of each board.
- (2) Proposed single-county administrative area: Formal requests shall be submitted by the board of education of any public school administrative unit within the county of the proposed administrative area or by petition of fifteen per cent (15%) of the number of qualified voters of the county who voted in the last preceding election for Governor, to the board of commissioners of the county of the proposed administrative area, who may fix the time for such election by resolution which shall be entered in the minutes of the board.

(b) Formal requests for elections on any of the questions specified in (a) above, or on the question of increasing the maximum annual rate of special taxes for the financial support of an institution with a properly established board of trustees, may be submitted to the tax levying authority only by such board of trustees.

(c) All formal requests for elections regarding the levy of special taxes shall state the maximum annual rate for which approval is to be sought in an election.

(d) Nothing in this section shall be construed to deny or limit the power of

the tax levying authority of an institution to hold elections, of its own motion, on any or all the questions provided in this section, subject to the provisions herein. (1963, c. 448, s. 23.)

§ 115A-23. Elections on question of conversion of institutions and issuance of bonds therefor.—Whenever the board of trustees of an institution requests the State Board of Education to convert the institution from an industrial education center to a technical institute or community college, or from a technical institute to a community college, the Board may require, as a prerequisite to such conversion:

- (1) The authorization by the voters of the administrative area of an annual levy of taxes within a specified maximum annual rate sufficient to provide the required local financial support for the converted institution, in an election held in accordance with the appropriate provisions of §§ 115A-20 and 115A-22.
- (2) The approval by the voters of the administrative area of the issuance of bonds for capital outlay necessary for the conversion of the institution, in an election held in accordance with the appropriate provisions of §§ 115A-20 and 115A-22. (1963, c. 448, s. 23.)

§ 115A-24. Payment of expenses of special elections under chapter.—The cost of special elections held under the authority of this chapter in connection with the establishment of an institution shall be paid out of the general fund of the county or counties which shall conduct such elections. All special elections held on behalf of a duly established institution shall be paid by such institution and the expenses may be included in the annual institutional budgets. (1963, c. 448, s. 23.)

§ 115A-25. Authority to issue bonds and notes, to levy taxes and to appropriate nontax revenues. — Counties are authorized to issue bonds and notes and to levy special taxes to meet payments of principal and interest on such bonds or notes and to levy special taxes for the special purpose of providing local financial support of an institution and otherwise to appropriate nontax revenues for the financial support of an institution, in the manner and for the purposes provided in this chapter.

Taxes authorized by this section are declared to be for a special purpose and may be levied notwithstanding any constitutional limitation or limitations imposed by any general or special law. (1963, c. 448, s. 23.)

§ 115A-26. Student tuition and fees. — The State Board of Education may fix and regulate all tuition and fees charged to students for applying to or attending any institution pursuant to this chapter.

The receipts from all student tuition and fees, other than student activity fees, shall be State funds and shall be deposited as provided by regulations of the State Board of Education. (1963, c. 448, s. 23.)

Cross Reference.—As to contracts by at junior colleges and industrial education minors borrowing for higher education centers, see § 116-174.1.

ARTICLE 4.

Budgeting, Accounting, and Fiscal Management.

§ 115A-27. Preparation and submission of institutional budgets.—On or before the first day of May of each year, the trustees of each institution shall prepare and submit a capital outlay budget and a current expense budget, on forms provided by the State Board of Education, and may prepare in their discretion a supplemental current expense budget. The budgets shall be prepared and submitted for approval according to the following procedures:

- (1) Capital outlay budget: The budget shall contain the items of capital outlay, as provided in §§ 115A-18 and 115A-19, for which funds are requested, from whatever source. The budget shall be submitted first to the tax levying authority, which shall approve or disapprove, in whole or in part, that portion of the budget requesting local public funds. Upon approval by the tax levying authority, the budget shall be submitted by the trustees to the State Board of Education, which may approve or disapprove, in whole or in part, that portion of the budget requesting State or federal funds.
- (2) Current expense budget: The budget shall contain the items of current operating expenses, as provided in §§ 115A-18 and 115A-19, for which funds are requested, from whatever source. The budget shall be submitted first to the tax levying authority, which shall approve or disapprove, in whole or in part, that portion of the budget requesting local public funds. Upon approval by the tax levying authority, the budget shall be submitted by the trustees to the State Board of Education, which may approve or disapprove, in whole or in part, the entire budget. The State Board is authorized to withhold the allocation of State funds to an institution until a budget has been submitted to and approved by the Board.
- (3) Supplemental current expense budget: The budget may contain any items of the current expense budget to be financed from State or federal funds which the trustees desire to supplement with local funds. The tax levying authority shall approve or disapprove, in whole or in part, that portion of the budget requesting local public funds. An information copy of the budget as approved shall be filed with the State Board of Education.
- (4) No public funds shall be provided an institution, either by the tax levying authority or by the State, except in accordance with the budget provisions of this chapter.
- (5) The preparation of a budget for and the payment of interest and principal on indebtedness incurred on behalf of an institution shall be the responsibility of the county accountant or county accountants of the administrative area and the board of trustees of the institution shall have no duty or responsibility in this connection. (1963, c. 448, s. 23.)

§ 115A-28. Administration of institutional budgets for local public funds.—(a) Duty of boards of trustees: It shall be the duty of the board of trustees of each institution to pay all obligations incurred in the operation of the institution promptly and when due, and to this end boards of trustees shall inform the tax levying authority from month to month of any anticipated expenditures which will exceed the current collection of taxes and such balance as may be on hand, if any, for the payment of said obligations, in order that the tax levying authority may make provision for the funds to be available. If a board of trustees shall willfully create a debt that shall in any way cause the expense of the year to exceed the amount authorized in the budget, without the approval of the tax levying authority, the indebtedness shall not be a valid obligation of the institution and the members of the board responsible for creating the debt may be held personally liable for the same.

(b) Duty of tax levying authorities: It shall be the duty of the tax levying authority of each institution to provide, as needed, the funds to meet the monthly expenditures, including salaries and other necessary operating expense, as set forth in a statement prepared by the board of trustees and in accordance with the approved budget. If the collection of taxes does not yield sufficient revenue for this purpose, it shall be the duty of the tax levying authority to borrow against the amount approved in the budget and to issue short term notes for the amount so borrowed in accordance with the provisions of the County Finance Act and the

Local Government Act. The interest on all such notes shall be provided by the tax levying authority in addition to the amount approved in the budget, unless this item is specifically included in the budget. (1963, c. 448, s. 23.)

§ 115A-29. Payment of State and local public funds to boards of trustees.—(a) The State Board of Education may deposit funds in the State treasury to the credit of each institution in monthly installments, at such time and in such manner as may be necessary to meet the needs of the institution, or the Board may disburse State funds to each institution under policies and regulations established by the board. Prior to the deposit or disbursement of State funds by the Board it shall be the duty of the board of trustees of each institution to file, on or before the first day of each month, with the State Board of Education a certified statement, on forms provided by the State Board of Education, of all expenditures, salaries, and other obligations that may be due and payable in the next succeeding month.

(b) Upon the basis of an approved budget, the county auditors or accountants of all counties of the administrative area of an institution shall determine the proportion of taxes, nontax revenues and other funds accruing to the current expense and capital outlay budgets of the institution and shall credit these funds to the institution as they are collected. The county treasurer or corresponding official of each county shall remit promptly at the end of each month all funds collected for current expenses and capital outlay, except bond funds, to the board of trustees of the institution.

In the event that a greater amount is collected and paid to the board of trustees of an institution than is authorized by its approved budgets for current expenses and capital outlay, the excess shall remain an unencumbered balance to be credited proportionally to those funds in the following fiscal year, and such excess shall not be spent, committed, or obligated unless the budget is revised with the approval of the board of trustees and the tax levying authority.

(c) Funds received by the trustees of an institution from insurance payments for loss or damage to buildings shall be used for the repair or replacement of such buildings or, if the buildings are not repaired or replaced, to reduce proportionally the institutional indebtedness borne by the counties of the administrative area of the institution receiving the insurance payments. If such payments which are not used to repair or replace institutional buildings exceed the total institutional indebtedness borne by all counties of the administrative area, such excess funds shall remain to the credit of the institution and be applied to the next succeeding capital outlay budgets until the excess fund shall be expended. Funds received by the trustees of an institution for loss or damage to the contents of buildings shall be divided between the board of trustees and the State Board of Education in proportion to the value of the lost contents owned by the board of trustees and the State, respectively. That portion retained by the trustees shall be applied to the repair or replacement of lost contents or shall remain to the credit of the institution to be applied to the next succeeding capital outlay and current expense budgets, as appropriate, until such funds shall be expended. (1963, c. 448, s. 23.)

§ 115A-30. Disbursement of institutional funds.—Public funds provided for an institution shall be paid out as follows:

- (1) State funds: All State funds received by or deposited to the credit of an institution shall be disbursed only upon warrants drawn on the State Treasurer and signed by two employees of the institution who shall have been designated by the board of trustees and who shall have been approved by the State Board of Education. Such funds may be disbursed in any other manner provided by regulations of the State Board of Education.
- (2) Local funds: All local public funds received by or credited to an institu-

tion shall be disbursed on warrants signed by two employees of the institution who shall have been designated by the board of trustees and who shall have been approved by the State Board of Education. Such warrants shall be countersigned by the appropriate county officer or officers as provided by law, but only if the funds required by such warrant are within the amount of funds remaining to the credit of the institution and are within the unencumbered balance of the appropriation for the item of expenditure according to the approved budgets of the institution: Provided, that in lieu of countersignature by the county officer or officers as provided by law, the board of county commissioners which appropriated the local public funds may from time to time, with the approval of the board of trustees of the institution, designate an employee of the institution to countersign the warrants, and the employee so designated shall countersign a warrant only if the funds required by such warrant are within the amount of funds remaining to the credit of the institution and are within the unencumbered balance of the appropriation for the item of expenditure according to the approved budgets of the institution. Each warrant shall be accompanied by an invoice, statement, voucher, or other basic document which indicates to the satisfaction of the countersigning county officer or officers that the issuance of such warrant is proper. (1963, c. 448, s. 23; 1965, c. 488, s. 2.)

Local Modification. — Duplin County: **Editor's Note.** — The 1965 amendment 1965, c. 961, s. 1. inserted the proviso in subdivision (2).

§ 115A-31. Purchase of equipment and supplies.—It shall be the duty of the several boards of trustees to purchase all supplies, equipment, and materials in accordance with contracts made by or with approval of the North Carolina Department of Administration. No contract shall be made by any board of trustees for purchases unless provision has been made in the budget of the institution to provide payment therefor, and in order to protect the State purchase contracts, it is the mandatory duty of the board of trustees and administrative officers of each institution to pay for such purchases promptly in accordance with the contract of purchase. (1963, c. 448, s. 23.)

§ 115A-32. Audits of institutional accounts.—The State Auditor shall be responsible for conducting annually a thorough post audit of the receipts, expenditures, and fiscal transactions of each institution.

The annual audits shall be completed as near to the close of the fiscal year as practicable and copies of each audit shall be filed with the chairman of the board of trustees, the executive head of the institution, the county auditor of each county of the administrative area, the State Board of Education, and the Director of the Local Government Commission. (1963, c. 448, s. 23.)

§ 115A-33. Surety bonds.—The State Board of Education shall determine what State employees and employees of institutions shall give bonds for the protection of State funds and property and the Board is authorized to place the bonds and pay the premiums thereon from State funds.

The board of trustees of each institution shall require all institutional employees authorized to draw or approve checks or vouchers drawn on local funds, and all persons authorized or permitted to receive institutional funds from whatever source, and all persons responsible for or authorized to handle institutional property, to be bonded by a surety company authorized to do business in this State in such amount as the board of trustees deems sufficient for the protection of such property and funds. The tax levying authority of each institution shall provide the funds necessary for the payment of the premiums on such bonds. (1963, c. 448, s. 23.)

§ 115A-34. Fire and casualty insurance on institutional buildings and contents.—(a) The board of trustees of each institution, in order to safeguard the investment in institutional buildings and their contents, shall

- (1) Insure and keep insured each building owned by the institution to the extent of the current insurable value, as determined by the insured and insurer, against loss by fire, lightning, and the other perils embraced in extended coverage; and
- (2) Insure and keep insured equipment and other contents of all institutional buildings that are the property of the institution or the State or which are used in the operation of the institution.

(b) The tax levying authority of each institution shall provide the funds necessary for the purchase of the insurance required in (a) above.

(c) Boards of trustees may purchase insurance from companies duly licensed and authorized to sell insurance in this State or may obtain insurance in accordance with the provisions of article 16, chapter 115, of the General Statutes, "State Insurance of Public School Property." (1963, c. 448, s. 23.)

§ 115A-35. Liability insurance; tort actions against boards of trustees.—(a) Boards of trustees may purchase liability insurance only from companies duly licensed and authorized to sell insurance in this State. Each contract of insurance must by its terms adequately insure the board of trustees against any and all liability for any damages by reason of death or injury to person or property proximately caused by the negligence or torts of the agents and employees of such board of trustees or institution when acting within the scope of their authority or the course of their employment. Any company which enters into such a contract of insurance with a board of trustees, by such act waives any defense based upon the governmental immunity of such board.

(b) Any person sustaining damages, or in case of death, his personal representative, may sue a board of trustees insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in a county of the administrative area of the institution against which the suit is brought; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of a governmental, municipal, or discretionary function of such board of trustees, to the extent that such board is insured as provided by this section.

(c) Nothing in this section shall be construed to deprive any board of trustees of any defense whatsoever to any action for damages, or to restrict, limit, or otherwise affect any such defense; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to the board of trustees or commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by law.

(d) No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Liability shall not attach unless the plaintiff shall waive the right to have all issues of law and fact relating to insurance in such action determined by a jury, and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcements of findings of fact or conclusions of law with respect thereto, unless the defendant shall request jury trial thereon.

(e) The board of trustees of all institutions in this chapter are authorized to pay as a necessary expense the lawful premiums of liability insurance provided in this section. (1963, c. 448, s. 23.)

ARTICLE 5.

*Special Provisions.***§ 115A-36. Authorization for transfer of State appropriations. —**

(a) Upon transferal of the administration and operation of industrial education centers from the State public school system to the provisions of this chapter, and upon request from the State Board of Education, the Director of the Budget, with the approval of the Advisory Budget Commission, is authorized to transfer funds appropriated to the State Board of Education for the support of industrial education centers under the title of "Vocational Education" to appropriation accounts established for the support of the institutions provided in this chapter.

(b) Upon transferal of the administration and operation of a community college from the provisions of article 3, chapter 116, of the General Statutes of North Carolina, to the provisions of this chapter, and upon request of the State Board of Education, the Director of the Budget, with the approval of the Advisory Budget Commission, is authorized to transfer funds appropriated to the Department of Administration under the title of "Community Colleges" to appropriation accounts established for the support of the institutions provided in this chapter. (1963, c. 448, s. 23.)

§ 115A-37. Multiple county administrative areas. — Should two or more counties determine to form an administrative area for the purpose of establishing and supporting an institution, the boards of commissioners of all such counties shall jointly propose a contract to be submitted to the State Board of Education as part of the request for establishment of an institution. The contract shall provide, in terms consistent with this chapter, for financial support of the institution, selection of trustees, termination of the contract and the administrative area, and any other necessary provisions. The State Board of Education shall have authority to approve the terms of the contract as a prerequisite for granting approval of the establishment of the institution and the administrative area. (1963, c. 448, s. 23.)

§ 115A-38. Special provisions for Central Piedmont Community College.—(a) As soon as practicable in accordance with the provisions of § 115A-4, transferal shall be made of the administration and operation of Mecklenburg College and Charlotte Central Industrial Education Center from their respective administrative boards to a single board of trustees selected as provided in § 115A-7 (a). The two institutions shall thereafter constitute the Central Piedmont Community College, which shall be operated in accordance with the provisions of this chapter as a single institution.

(b) The board of commissioners of Mecklenburg County is authorized to provide the local financial support for the Central Piedmont Community College as provided in § 115A-19 by levying a special tax to a maximum annual rate equal to the maximum rate last approved by the voters of the county for the support of the Central Piedmont Community College as operated pursuant to article 3, chapter 116, of the General Statutes of North Carolina, or by appropriations from nontax revenues, or by both. The question of increasing the maximum annual rate may be submitted at an election held in accordance with the provisions of § 115A-20 (d) and the appropriate provisions of § 115A-22.

(c) When, in the opinion of the board of trustees of said institution, the use of any building, building site, or other real property owned or held by said board is unnecessary or undesirable for the purposes of said institution, the board of trustees may sell, exchange, or lease such property in the same manner as is provided by law for the sale, exchange, or lease of school property by county or

city boards of education. The proceeds of any such sale or lease shall be used for capital outlay purposes. (1963, c. 448, s. 23; 1965, c. 402.)

Editor's Note. — The 1965 amendment substituted "Central Piedmont Community College" for "Charlotte Community College System" throughout subsections (a) and (b) and added subsection (c).

ARTICLE 6.

Textile Training School.

§ 115A-39. Creation of board of trustees; members and terms of office; no compensation.—The affairs of the North Carolina Vocational Textile School shall be managed by a board of trustees composed of six members, who shall be appointed by the Governor, and the State Director of Vocational Education as ex officio member thereof. The terms of office of the trustees appointed by the Governor shall be as follows: Two of said trustees shall be appointed for a term of two years; two for three years; and two for four years. At the expiration of such terms, the appointments shall be made for periods of four years. In the event of any vacancy on said boards, the vacancy shall be filled by appointment by the Governor for the unexpired term of the member causing such vacancy. The members of the said board of trustees appointed by the Governor shall serve without compensation. The re-enactment of this section shall not have the effect of vacating the appointment or changing the terms of any of the members of said board of trustees heretofore appointed. (1955, c. 1372, art. 27, s. 1; 1963, c. 448, s. 30.)

Editor's Note. — This article formerly appeared as §§ 115-236 to 115-239. It was transferred to its present position by Session Laws 1963, c. 448, s. 30, effective July 1, 1963.

§ 115A-40. Powers of board.—The said board of trustees shall hold all the property of the North Carolina Vocational Textile School and shall have the authority to direct and manage the affairs of said school, and within available appropriations therefor, appoint a managing head and such other officers, teachers and employees as shall be necessary for the proper conduct thereof. The board of trustees, on behalf of said school, shall have the right to accept and administer any and all gifts and donations from the United States government or from any other source which may be useful in carrying on the affairs of said school. Provided, however, that the said board of trustees is not authorized to accept any such funds upon any condition that the said school shall be operated contrary to any provision of the Constitution or statutes of this State. (1955, c. 1372, art. 27, s. 2; 1963, c. 448, s. 30.)

§ 115A-41. Board vested with powers and authority of former boards.—The board of trustees acting under authority of this article is vested with all the powers and authority of the board created under authority of chapter 360 of the Public Laws of 1941, and the board created under authority of chapter 806 of the Session Laws of 1945. (1955, c. 1372, art. 27, s. 3; 1963, c. 448, s. 30.)

§ 115A-42. Persons eligible to attend institution; subjects taught.—Persons eligible for attendance upon this institution shall be at least sixteen years of age and legal residents of the State of North Carolina: Provided, that out-of-state students, not to exceed ten per cent (10%) of the total enrollment, may be enrolled when vacancies exist, upon payment of tuition, the amount of tuition to be determined by the board of trustees. The money thus collected is to be deposited in the treasury of the North Carolina Vocational Textile School, to be used as needed in the operation of the school. The institution shall teach the general principles and practices of the textile manufacturing and related subjects. (1955, c. 1372, art. 27, s. 4; 1963, c. 448, s. 30.)

Chapter 116. Higher Education.

Article 1.

The University of North Carolina.

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Sec.

116-2.1. Establishment of additional campuses of the University.

116-3.1. [Repealed.]

116-15. Functions of the University.

Part 2. North Carolina State University at Raleigh.

116-27. Operation of North Carolina State.

116-28, 116-29. [Repealed.]

116-32. Agricultural research stations.

116-33. [Repealed.]

116-34. Joint employment by State university and State.

116-35. Co-ordinating committee of State university and Department of Agriculture created.

Part 3. The University of North Carolina at Greensboro.

116-38. Operation of University of North Carolina at Greensboro.

Part 3A. The University of North Carolina at Charlotte.

116-39. Charlotte College to become "The University of North Carolina at Charlotte."

116-40, 116-41. [Repealed.]

Part 4. Revenue Bonds for Service and Auxiliary Facilities.

116-41.1. Definitions.

116-41.2. Powers of board of trustees generally.

116-41.3. University authorized to pay service charges; payments deemed revenues.

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116-41.5. Contents of resolution authorizing issuance; powers liberally construed; deposit and use of revenues; rights and remedies of bondholders; service charges; insurance of projects; depositaries.

116-41.6. Pledge of revenues; lien.

Sec.

116-41.7. Proceeds of bonds, revenues, etc., deemed trust funds.

116-41.8. Rights and remedies of bondholders.

116-41.9. Refunding revenue bonds.

116-41.10. Exemption from taxation.

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116-41.12. Part provides supplemental and additional powers; compliance with other laws not required.

Part 5. Miscellaneous Provisions.

116-44.2. Child development research and demonstration center.

Article 2.

Western Carolina College, East Carolina College, Appalachian State Teachers College, Pembroke State College, Agricultural and Technical College of North Carolina, North Carolina College of Durham, Elizabeth City State College, Fayetteville State College, Winston-Salem State College, Asheville-Biltmore College, Wilmington College.

116-45.1. Change of name of Elizabeth City State Teachers College to Elizabeth City State College.

116-45.2. Conversion of Asheville-Biltmore College and Wilmington College from junior to senior colleges.

116-46.1. Motor vehicle laws applicable to streets, alleys and driveways on campus of Appalachian State Teachers College; college trustees authorized to adopt traffic regulations

116-46.2. Purchase of annuity or retirement income contracts for faculty members, officers and employees.

116-46.3. Participation in sixth-year program of graduate instruction for superintendents, assistant superintendents, and principals of public schools.

116-46.4. School of medicine authorized at East Carolina College; meeting requirements of accrediting agencies.

GENERAL STATUTES OF NORTH CAROLINA

Article 3.

Community Colleges.

Sec.

- 116-62.1. Motor vehicle laws applicable to streets, alleys and driveways on campus of Chowan College; college trustees authorized to adopt traffic regulations.

Article 4.

School for Professional Training in Performing Arts.

- 116-63. Policy.
116-64. Establishment of school.
116-65. Board of trustees to govern; appointment of members; terms; officers; title of board; powers generally.
116-66. Enumerated powers of board.
116-67. Advisory board.
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116-69. Purpose of school program.
116-70. Applicable statutes.

Article 5.

Loan Fund for Prospective College Teachers.

- 116-71. Purpose of article.
116-72. Fund established.
116-73. Joint committee for administration of Fund; rules and regulations.
116-74. Duration of Fund; use of repaid loans and interest.

Article 10.

State School for the Blind and the Deaf in Raleigh.

- 116-105 to 116-119. [Transferred.]

Article 11.

North Carolina School for the Deaf at Morganton.

- 116-120. [Transferred.]
116-121 to 116-124. [Repealed.]
116-124.1. [Transferred.]
116-125. [Transferred.]

Article 11A.

Eastern North Carolina School for the Deaf and North Carolina School for the Deaf at Morganton.

- 116-125.1 to 116-125.5. [Transferred.]

Article 12.

The Caswell School.

- 116-126 to 116-137. [Repealed.]

Article 13.

Colored Orphanage of North Carolina.

- 116-138 to 116-142. [Transferred.]

Article 13A.

Negro Training School for Feeble-Minded Children.

Sec.

- 116-142.1 to 116-142.10. [Repealed.]

Article 14.

General Provisions as to Tuition Fees in Certain State Institutions.

- 116-143. State-supported institutions of higher education required to charge tuition fees.

Article 15.

Educational Advantages for Children of World War Veterans.

- 116-149.1. "State educational institution" defined to include community college.

Article 16.

State Board of Higher Education.

- 116-159. Board's decisions limited by appropriations.
116-161. Licensing of institutions; regulation of degrees.
116-163. Office space; Director of Higher Education; review of actions of Director; other employees.

Article 18A.

Contracts of Minors Borrowing for Higher Education.

- 116-174.1. Minors authorized to borrow for higher education; interest; requirements of loans.

Article 20.

Motor Vehicles of Students.

- 116-186. Registration and regulation of motor vehicles maintained and operated by students on campuses.

Article 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

- 116-187. Purpose of article.
116-188. Credit and taxing power of State not pledged; statement on face of bonds.
116-189. Definitions.
116-190. General powers of board of trustees.
116-191. Issuance of bonds.
116-192. Trust agreement; money received deemed trust funds; insurance; remedies.

Sec.

- 116-193. Fixing fees, rents and charges; sinking fund.
- 116-194. Vesting powers in executive committee.
- 116-195. Refunding bonds.
- 116-196. Exemption from taxation; bonds eligible for investment or deposit.
- 116-197. Article provides additional and alternative method.
- 116-198. Inconsistent laws declared inapplicable.

Article 22.

Visiting Speakers at State Supported Institutions.

- 116-199. Use of facilities for speaking purposes.
- 116-200. Enforcement of article.

Article 23.

State Education Assistance Authority.

- 116-201. Definitions.
- 116-202. Authority may buy and sell students' obligations; undertakings of Authority limited to revenues.

Sec.

- 116-203. Authority created as subdivision of State; appointment, terms and removal of board of directors; officers; quorum; expenses and compensation of directors.
- 116-204. Powers of Authority.
- 116-205. Title to property; use of State lands; offices.
- 116-206. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.
- 116-207. Terms of acquisitions.
- 116-208. Construction of article.
- 116-209. Trust fund established; use and investment of fund; duties of State Treasurer.

Article 24.

Learning Institute of North Carolina.

- 116-210. State agencies and institutions may contract with Learning Institute; audits.
- 116-211. Contracts for operation of Advancement School authorized.

ARTICLE 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Constitutional provisions.

Editor's Note.—The title of this chapter was changed from "Educational Institutions of the State" to "Higher Education" by Session Laws 1963, c. 448, s. 32, effective July 1, 1963.

Section Repeats Constitutional Provision. — The General Assembly repeated N.C. Const., Art. IX, § 6, *ipsissimis verbis* in this section. In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

Power of Board to Make Rules and

Regulations.—Under the Constitution and statutes of this State, the management of the University of North Carolina is delegated to and invested in the board of trustees, and the board of trustees may make all necessary and proper and reasonable rules and regulations for the orderly management and government of the University of North Carolina and for the preservation of discipline of its students. In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

§ 116-2. Consolidated University of North Carolina.—(a) The University of North Carolina, the North Carolina State College of Agriculture and Engineering, and the North Carolina College for Women are hereby consolidated and merged into "The University of North Carolina." The said "The University of North Carolina" shall constitute one university, and the only university primarily dependent for its support on the State of North Carolina. Without diminishing its consolidated, merged, and unified status, the University shall be comprised of constituent, subordinate, and component institutions and campuses of higher education which, for the purpose of maintaining their traditional and historical identity and integrity, shall be lawfully known and designated only as provided in subsection (b) of this section.

(b) Those three campuses of the University shall be designated respectively

"The University of North Carolina at Chapel Hill," "North Carolina State University at Raleigh," and "The University of North Carolina at Greensboro"; and any general campus or campuses of the University hereafter established shall be designated "The University of North Carolina at (place name)." All statutory references to the three existing campuses of the University of North Carolina are amended to conform to the requirements of this section.

On July 1, 1965, the University of North Carolina at Charlotte shall become a campus of the University of North Carolina. (1931, c. 202, s. 1; 1963, c. 448, s. 1; 1965, c. 31, s. 1; c. 213.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, added the second paragraph.

The first 1965 amendment, effective July 1, 1965, added the last paragraph.

The second 1965 amendment, effective July 1, 1965, designated the paragraphs of

the section as subsections (a) and (b), added the second and third sentences in subsection (a) and substituted "North Carolina State University at Raleigh" for "North Carolina State of the University of North Carolina at Raleigh" in subsection (b).

§ 116-2.1. Establishment of additional campuses of the University.

—The procedure and standards for the establishment of an additional campus or campuses of the University of North Carolina shall be as follows:

- (1) Whenever the board of trustees of the University finds that there may be a need for an additional campus or campuses of the University, the board shall direct that a study be made of the relevant educational needs of the State, such study to take particular account of the relevant educational needs of the area or areas of the State designated by the board of trustees.
- (2) The board of trustees of the University shall give careful consideration to the report on the aforementioned study of educational needs, and if the board finds
 - a. that sufficient educational needs exist to justify the establishment of an additional campus or campuses of the University, and
 - b. that it appears probable that sufficient additional funds can be made available to establish and maintain such additional campus or campuses without impairing the quality and extent of the instructional and research programs at the existing campuses of the University, then the board of trustees shall establish such additional campus or campuses at a place or places designated by the board, subject to
 1. the approval of the North Carolina Board of Higher Education, and
 2. the approval and provision of adequate financial support for the proposed additional campus or campuses by the General Assembly.
 3. The standards and criteria prescribed by the board of trustees of the University for the existing campuses of the University shall apply to any additional campus or campuses of the University which may be established. (1963, c. 448, s. 2.)

Editor's Note.—The act inserting this section became effective July 1, 1963.

§ 116-3. Incorporation and corporate powers.

Power of Board to Make Rules and

Regulations.—See note to § 116-1.

§ 116-3.1: Repealed by Session Laws 1963, c. 448, s. 3, effective July 1, 1963.

§ 116-4. Trustees; number, election and term.—There shall be one hundred trustees of the University of North Carolina, at least ten of whom shall be women, who shall be elected by the General Assembly by joint ballot of both houses. The General Assembly in one thousand nine hundred and thirty-one shall elect such trustees, and their terms of office shall commence on July 1, 1932.

Twenty-five of the trustees shall be elected for terms expiring April 1, 1933, twenty-five for terms expiring April 1, 1935, twenty-five for terms expiring April 1, 1937, and twenty-five for terms expiring April 1, 1939. As and when their terms respectively expire, their successors shall be elected by the General Assembly by joint ballot for terms of eight years. Trustees shall continue to serve until their successors are elected. The Superintendent of Public Instruction is ex-officio a trustee of the University.

The members of the board of trustees of the University or other State institutions of North Carolina shall be deemed commissioners of public charities within the meaning of the proviso to section seven of Art. XIV of the Constitution of North Carolina. (Const., art. 9, s. 6; 1873-4, c. 64; 1876-7, c. 121, ss. 1, 2; 1883, c. 124, ss. 1, 2; Code, ss. 2620, 2625; Rev., s. 4268; 1909, c. 432; 1917, c. 47; C. S., s. 5789; 1931, c. 202, ss. 4, 5; 1937, c. 139; 1963, c. 448, s. 18.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, inserted the third sentence of the second paragraph. **Stated in** In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

§ 116-6. Trustees may remove members of board. — The board of trustees shall have power to vacate the appointment and remove a trustee for improper conduct, stating the cause of such removal on the journal; but this shall not be done except at a regular meeting of the board, and there shall be present at the doing thereof at least sixty-five of the members of the board. (R. S., vol. 2, p. 432; Code, s. 2619; Rev., s. 4270; C. S., s. 5790; 1963, c. 448, s. 20.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "sixty-five" for "twenty" near the end of the section.

§ 116-8. Meetings of trustees, regular and special; quorum.—There shall be three regular meetings of the board of trustees each calendar year. One of these regular meetings shall be in the city of Raleigh, which meeting shall be held during the session of the General Assembly during the years that body convenes. The other regular meetings shall be held at such time and place as the Governor may appoint. At any of the regular meetings of the board any number of trustees, not less than fifty-one, shall constitute a quorum and be competent to exercise full power and authority to do the business of the corporation; and the board or the Governor shall have power to appoint special meetings of the trustees at such time and place as, in their opinion, the interest of the corporation may require; but no special meeting shall have power to revoke or alter any order, resolution, or vote of any regular meeting; and the board of trustees at any regular meeting may, by resolution, vote, or ordinance, from time to time, as to it shall seem meet, limit, control, and restrain the business to be transacted, and the power to be possessed and exercised by special meetings of the board, called according to law, and the powers of such special meetings shall be limited, controlled and restrained accordingly. And every order, vote, resolution, or other act done, made, or adopted by any special meeting, contrary to any order, resolution, vote, or ordinance of the board at any regular meeting shall be absolutely, to all intents and purposes, null and void. (R. S., vol. 2, p. 433; 1873-4, c. 64, s. 2; Code, ss. 2616, 2618, 2621; Rev., s. 4269; C. S., s. 5792; 1963, c. 448, ss. 19, 20.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "three" for "meeting" in the third sentence, and "fifty-one" for "ten" near the beginning for "two" in the first sentence, "meetings" of the fourth sentence.

§ 116-10. Rules and regulations.

Rules and Regulations for Preservation of Discipline.—The board of trustees may make all necessary and proper and reasonable rules and regulations for the orderly management and government of the

University of North Carolina and for the preservation of discipline of its students. In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

§ 116-11. Executive committee.

Quoted in In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

§ 116-15. Functions of the University.—The University of North Carolina shall provide instruction in the liberal arts, fine arts, and sciences, and in the learned professions, including teaching, these being defined as those professions which rest upon advanced knowledge in the liberal arts and sciences; and shall be the primary State-supported agency for research in the liberal arts and sciences, pure and applied. The University shall provide instruction in the branches of learning relating to agriculture and the mechanic arts, and to other scientific and to classical studies. The University shall be the only institution in the State system of higher education authorized to award the doctor's degree. The University shall extend its influence and usefulness as far as possible to the persons of the State who are unable to avail themselves of its advantages as resident students, by extension courses, by lectures, and by such other means as may seem to them most effective. (1919, c. 199, s. 3; C. S., s. 5837; 1963, c. 448, s. 4.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, added the first three sentences.

§ 116-16. Awarding of degrees, etc., by consolidated University.—The faculty of the University, that is to say, the president and professors, shall have the power of conferring all such degrees or marks of literary distinction as are usually conferred by colleges or universities. All degrees or marks of literary distinction conferred by the University of North Carolina or any of its component campuses as herein specified, shall be conferred by the faculty of the University of North Carolina or the faculty of any one of its component campuses by and with the consent of the board of trustees, but degrees or marks of literary distinction conferred by the faculty of any one of the said campuses shall designate the campus through or by which said degree or mark of literary distinction is conferred. (C. S., s. 5796; 1931, c. 202, s. 11; 1963, c. 448, s. 5.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "campuses" for "colleges" in three places and "campus" for "college" in one place in the second sentence.

§ 116-20. Escheats to University.—All real estate which has heretofore accrued to the State, or shall hereafter accrue from escheats, shall be vested in the University of North Carolina, and shall be appropriated to the use of that corporation. Title to any such real property which has escheated to the University of North Carolina, shall be conveyed by deed in the manner now provided by G. S. 146-74 through 146-78, except as is otherwise provided herein: Provided, that in any action in the superior court of North Carolina wherein the University of North Carolina is a party, and wherein said court enters a judgment of escheat in behalf of the University of North Carolina for any real property, then, upon petition of the University of North Carolina in said action, said court shall have the authority to appoint the escheat officer of the University of North Carolina as a commissioner for the purpose of selling said real property at a public sale, for cash, at the courthouse door in the county in which the property is located, after properly advertising the sale according to law. The said commissioner, when appointed by the court, shall have the right to convey

a valid title to the purchaser of the property at public sale, but only after said sale shall have first been confirmed and approved by the comptroller of the University of North Carolina. The funds derived from the sale of any such escheated real property by the commissioner so appointed shall thereafter be paid by him into the escheat fund of the University of North Carolina. (Const., art. 9, s. 7; 1789, c. 306, s. 2; P. R.; R. C., c. 113, s. 11; Code, s. 2626; Rev., s. 4282; C. S., s. 5784; 1947, c. 494; 1961, c. 257.)

Editor's Note.—

The 1961 amendment struck out "§ 143-146 to and including § 143-150 of the General Statutes of North Carolina" and

substituted therefor "G. S. 146-74 through 146-78, except as is otherwise provided herein".

§ 116-23. Other unclaimed personalty to University.

Local Modification.—By virtue of Session Laws 1965, c. 473, Forsyth should be stricken from the replacement volume.

Cited in *McMillan v. Robeson County*, 262 N.C. 413, 137 S.E.2d 105 (1964).

§ 116-23.1. Unclaimed funds held or owing by life insurance companies.

(d) Notice; Publication.—On or before the first day of September following the making of such reports under this section, the Commissioner of Insurance shall cause to be published notices entitled: "Notice of Certain Unclaimed Funds Held or Owing by Life Insurance Companies." Each such notice shall be published once a week for two successive weeks in a newspaper published in the county of this State in which is located such last known address of each such insured, or other person who, according to the company's records may have an interest in such unclaimed fund, or by posting such notice at the courthouse door of said county.

The notice shall set forth in alphabetical order the names contained in such reports of each insured whose last known address is within the county of publication together with

- (1) The amount reported due and the date it became payable,
- (2) The name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds, and
- (3) The name and address of the company.

The notice shall also state that such unclaimed funds will be paid by the company to persons establishing to its satisfaction before the following December 1st their right to receive the same, and that not later than December 1st such unclaimed funds still remaining will be paid to the University of North Carolina which shall thereafter be liable for the payment thereof.

It shall not be obligatory upon the Commissioner of Insurance to publish any item of less than fifty dollars in such notice, unless the Commissioner of Insurance deems such publication to be in the public interest. The expenses of publication shall be charged against the University of North Carolina.

(1961, c. 493.)

Editor's Note.—

The 1961 amendment deleted the words "if no newspapers are published in such county, then" formerly following the word

"or" in line eight of subsection (d). As only this subsection was affected by the amendment the rest of the section is not set out.

Part 2. North Carolina State University at Raleigh.

§ 116-27. Operation of North Carolina State. — The North Carolina State College of Agriculture and Engineering shall from and after March 27, 1931, be conducted and operated as part of the University of North Carolina. It shall

be located at Raleigh, North Carolina, and shall be known as North Carolina State University at Raleigh. (1931, c. 202, s. 2; 1963, c. 448, s. 6; 1965, c. 213.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "North Carolina State of the University of North Carolina at Raleigh" for "the North Carolina State College of Agriculture and Engineering of the University of North Carolina" at the end of the section.

The 1965 amendment, effective July 1, 1965, substituted "North Carolina State University at Raleigh" for "North Carolina State of the University of North Carolina at Raleigh" at the end of the section.

§§ 116-28, 116-29: Repealed by Session Laws 1963, c. 448, s. 7, effective July 1, 1963.

§ 116-30. **Board to accept gifts and congressional donations.**—The board of trustees shall use, as in its judgment may be proper, for the purposes of the University and for the benefit of education in agriculture and mechanic arts, as well as in furtherance of the powers and duties now or which may hereafter be conferred upon such board by law, any funds, buildings, lands, laboratories, and other property which may be in its possession. The board of trustees shall have power to accept and receive on the part of the State, property, personal, real or mixed, and any donations from the United States Congress to the several states and territories for the benefit of agricultural experiment stations or the agricultural and mechanical colleges in connection therewith, and shall expend the amount so received in accordance with the acts of the Congress in relation thereto. (1907, c. 406, s. 6; C. S., s. 5816; 1963, c. 448, s. 8.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "the University" for "such College" in the first sentence.

§ 116-31. **Land scrip fund.** — The board of trustees shall own and hold the certificates of indebtedness, amounting to one hundred and twenty-five thousand dollars, issued for the principal of the land scrip fund, and the interest thereon shall be paid to them by the State Treasurer semiannually on the first day of July and January in each year for the purpose of aiding in the support of North Carolina State University at Raleigh in accordance with the act of the Congress approved July second, one thousand eight hundred and sixty-two, entitled, "An act donating public lands to several states and territories which may provide colleges for the benefit of agriculture and mechanic arts." (1907, c. 406, s. 8; C. S., s. 5817; 1963, c. 448, s. 8; 1965, c. 213.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "North Carolina State of the University of North Carolina at Raleigh" for "such College" near the middle of the section.

The 1965 amendment, effective July 1, 1965, substituted "North Carolina State University at Raleigh" for "North Carolina State of the University of North Carolina at Raleigh."

§ 116-32. **Agricultural research stations.** — The agricultural research stations shall be connected with North Carolina State University at Raleigh and shall be controlled by the board of trustees. (1907, c. 406, s. 12; C. S., s. 5825; 1963, c. 448, s. 9; 1965, c. 213.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, rewrote this section.

The 1965 amendment, effective July 1, 1965, substituted "North Carolina State

University at Raleigh" for "North Carolina State of the University of North Carolina at Raleigh."

§ 116-33: Repealed by Session Laws 1963, c. 448, s. 10, effective July 1, 1963.

§ 116-34. **Joint employment by State university and State.**—Whenever it shall be to the advantage of North Carolina State University at Raleigh and any department of the State government to employ jointly any person, the board of trustees and the governing authority of the department, on the approval

of the Governor, are hereby authorized to make such employment and to prorate the amount of the salary and other expenses that each shall be required to pay. (1925, c. 198, s. 2; 1963, c. 448, s. 11; 1965, c. 213.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "North Carolina State of the University of North Carolina at Raleigh" for "the North Carolina State College of Agriculture and Engineering."

The 1965 amendment, effective July 1, 1965, substituted "North Carolina State University at Raleigh" for "North Carolina State of the University of North Carolina at Raleigh."

§ 116-35. Co-ordinating committee of State university and Department of Agriculture created.—A co-ordinating committee is hereby created consisting of thirteen members as follows: The president of the board of trustees of the University of North Carolina, who shall be ex officio chairman of said committee, the president of the University, the chief administrative officer of North Carolina State University at Raleigh, and the dean of agriculture, the Commissioner of Agriculture, the assistant commissioner of agriculture, and the State Chemist or any other officer in the Department of Agriculture which the Commissioner of Agriculture may designate, three members of the board of trustees of the University of North Carolina who have a practical knowledge of agriculture, to be appointed by the president of the said board, and three members of the State Board of Agriculture, to be appointed by the Commissioner of Agriculture, the members so appointed to serve for a term of two years or until their successors are duly appointed. (1939, c. 255, s. 1; 1963, c. 448, s. 12; 1965, c. 213.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "chief administrative officer of North Carolina State of the University of North Carolina at Raleigh" for "dean of administration of State College of Agriculture and Engineering."

The 1965 amendment, effective July 1, 1965, substituted "North Carolina State University at Raleigh" for "North Carolina State of the University of North Carolina at Raleigh."

§ 116-36. Duties of co-ordinating committee.—It shall be the duty of the co-ordinating committee herein created to deal with and handle any existing matters of duplication, overlapping or disagreement, and such controversial matters as may arise in the future in the agricultural agencies of North Carolina State University at Raleigh and the Department of Agriculture. Whenever there is an overlapping or disagreement in consequence of closely allied functions and duties of the said agencies, it shall be the duty of the co-ordination committee to allocate, after due consideration, such duties and functions as may be in disagreement or overlapping, and that are not already allocated by law, to the proper agency as it may deem wise, and to require such co-operation between the employees in the agencies as it may deem necessary. The co-ordinating committee may investigate, on complaint, or on its own initiative, any overlapping, duplication or disagreement and the decision of the said committee shall be binding on all parties. (1939, c. 255, s. 2; 1963, c. 448, s. 13; 1965, c. 213.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, substituted "North Carolina State of the University of North Carolina at Raleigh" for "the State College of Agriculture and Engineering" near the end of the first sentence.

The 1965 amendment, effective July 1, 1965, substituted "North Carolina State University at Raleigh" for "North Carolina State of the University of North Carolina at Raleigh."

Part 3. The University of North Carolina at Greensboro.

§ 116-38. Operation of University of North Carolina at Greensboro.—The North Carolina College for Women shall from and after March 27, 1931, be conducted and operated as a part of the University of North Carolina. It shall be located at Greensboro, North Carolina, and shall be known as the University

of North Carolina at Greensboro. (1931, c. 202, s. 3; 1943, c. 543; 1963, c. 448, s. 14.)

Editor's Note.—

The 1963 amendment, effective July 1, 1963, substituted "the University of North

Carolina at Greensboro" for "the Woman's College of the University of North Carolina" at the end of the section.

Part 3A. The University of North Carolina at Charlotte.

§ 116-39. Charlotte College to become "The University of North Carolina at Charlotte."—(a) Charlotte College shall become a campus of the University of North Carolina under the designation "The University of North Carolina at Charlotte" on July 1, 1965, whereupon it shall cease to be subject to the terms of article 2, chapter 116, of the General Statutes and shall become subject to the terms of article 1, chapter 116, of the General Statutes.

(b) The board of trustees of Charlotte College shall, on or before July 1, 1965, execute proper legal instruments conveying to the University of North Carolina, without consideration, all right, title, and interest of the grantor in and to the real and personal property of Charlotte College, including all endowments, executory contracts, and unexpended State appropriations. Mecklenburg County shall continue to be solely liable for the repayment of all indebtedness incurred by that county in aid of Charlotte College. (1965, c. 31, s. 2.)

Editor's Note. — A former § 116-39, which was repealed by Session Laws 1963, c. 448, s. 15, related to the Woman's Col-

lege of the University of North Carolina. The repealed section derived from Public Laws 1919, c. 199.

§§ 116-40, 116-41: Repealed by Session Laws 1963, c. 448, s. 15.

Editor's Note. — The repealed sections formerly appeared under "Part 3. Woman's College of the University of North Caro-

lina." They derived from Public Laws 1891, c. 139; 1905, c. 502; 1919, c. 199.

Part 4. Revenue Bonds for Service and Auxiliary Facilities.

Editor's Note.—Former Part 3A was redesignated "Part 4" by Session Laws 1965, c. 31, s. 2, effective July 1, 1965.

§ 116-41.1. Definitions.—As used in this part:

- (1) "Board" means the board of trustees of the University of North Carolina;
- (2) "Construction" means acquisition, construction, provision, reconstruction, replacement, extension, improvement or betterment, or any combination thereof;
- (3) "Cost", as applied to a project, shall include the cost of construction (as herein defined), the cost of all labor, materials and equipment, the cost of all lands, property, rights and easements acquired, financing charges, interest prior to and during construction and, if deemed advisable by the board, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and/or revenues, cost of engineering and legal services, and all other expenses necessary or incident to such construction, administrative expense and such other expenses, including reasonable provisions for initial operating expenses necessary or incident to the financing herein authorized, and any expense incurred by the board in the issuance of bonds under the provisions of this part in connection with any of the foregoing items of cost;
- (4) "Project" means any undertaking under this part to acquire, construct or provide at the University of North Carolina at Chapel Hill, North Carolina, service and auxiliary facilities necessary or desirable for the

students or staff or in the operation of the University, either as additions, extensions, improvements or betterments to the University Enterprises or otherwise, including one or more or any combination of any system, facility, plant, works, instrumentality or other property used or useful:

- a. In obtaining, conserving, treating or distributing water for domestic, industrial, sanitation, fire protection or any other public or private use;
 - b. For the collection, treatment, purification or disposal of sewage, refuse or wastes;
 - c. For the production, generation, transmission or distribution of gas, electricity or heat;
 - d. In providing communication facilities including telephone facilities;
 - e. In providing storage, service, repair and duplicating facilities;
 - f. In improving, extending or adding to the University Enterprises as herein defined; and
 - g. In providing other service and auxiliary facilities serving the needs of the students, the staff or the physical plant of the University; and including all plants, works, appurtenances, machinery, equipment and properties, both personal and real, used or useful in connection therewith;
- (5) "Revenue bonds" or "bonds" means bonds of the University issued by the board to pay the cost, in whole or in part, of any project pursuant to this part and the bond resolution or resolutions of the board; provided, however, that bonds, issued as a separate series which are stated to mature not later than twenty years from their date may be designated "revenue notes" or "notes";
- (6) "Revenues" means the income and receipts derived by or for the account of the University through the charging and collection of service charges;
- (7) "Service charges" means rates, fees, rentals or other charges for, or for the right to, the use, occupancy, services or commodities of or furnished by any project, or by any other service or auxiliary facility of the University, including the University Enterprises, any part of the income of which is pledged to the payment of the bonds or the interest thereon;
- (8) "University" means the body politic and corporate known and distinguished by the corporate name of the "University of North Carolina" under § 116-3 of the General Statutes;
- (9) "University Enterprises" means the following existing facilities, systems, properties, plants, works and instrumentalities located in or near the town of Chapel Hill, North Carolina, presently in the jurisdiction of and operated by the University; the telephone, electric, heating and water systems, the laundry, Carolina Inn, service and repair shops, the duplicating shop, book stores and student supply stores, and rental housing properties for faculty members. (1961, c. 1078, s. 1; 1963, c. 448, s. 16; c. 944, s. 1; 1965, c. 1033, s. 1.)

Cross Reference.—As to revenue bonds for student housing, see §§ 116-175 to 116-185.

Editor's Note.—The first 1963 amendment, effective July 1, 1963, substituted "at" for "in" preceding the words "Chapel Hill" near the beginning of subdivision (4).

The second 1963 amendment substituted

"twenty" for "five" near the end of subdivision (5).

The 1965 amendment substituted "town of Chapel Hill" for "city of Chapel Hill" in subdivision (9) and deleted "store-rooms" from, and added "book stores and student supply stores" to, the list of facilities in that subdivision.

§ 116-41.2. Powers of board of trustees generally. — In addition to the powers which the board now has, the board shall have the following powers subject to the provisions of this part and subject to agreements with the holders of any revenue bonds issued hereunder:

- (1) To acquire by gift, purchase or the exercise of the power of eminent domain or to construct, provide, improve, maintain and operate any project or projects;
- (2) To borrow money for the construction of any project or projects, and to issue revenue bonds therefor in the name of the University;
- (3) To establish, maintain, revise, charge and collect such service charges (free of any control or regulation by any State regulatory body) as will produce sufficient revenues to pay the principal of and interest on the bonds and otherwise to meet the requirements of the resolution or resolutions of the board authorizing the issuance of the revenue bonds;
- (4) To pledge to the payment of any bonds of the University issued hereunder and the interest thereon the revenues of the project financed in whole or in part with the proceeds of such bonds, and to pledge to the payment of such bonds and interest any other revenues, subject to any prior pledge or encumbrance thereof;
- (5) To appropriate, apply, or expend in payment of the cost of the project the proceeds of the revenue bonds issued for the project;
- (6) To sell, furnish, distribute, rent, or permit, as the case may be, the use, occupancy, services, facilities and commodities of or furnished by any project or any system, facility, plant, works, instrumentalities or properties whose revenues are pledged in whole or in part for the payment of the bonds, and to sell, exchange, transfer, assign or otherwise dispose of any project or any of the University Enterprises or any other service or auxiliary facility or any part of any thereof or interest therein determined by resolution of the board not to be required for any public purpose by the board;
- (7) To retain and employ consultants and other persons on a contract basis for rendering professional, technical or financial assistance and advice in undertaking and carrying out any project and in operating, repairing or maintaining any project or any system, facility, plant, works, instrumentalities or properties whose revenues are pledged in whole or in part for the payment of the bonds; and
- (8) To enter into and carry out contracts with the United States of America or this State or any municipality, county or other public corporation and to lease property to or from any person, firm or corporation, private or public, in connection with exercising the powers vested under this part. (1961, c. 1078, s. 2.)

§ 116-41.3. University authorized to pay service charges; payments deemed revenues.—The University is hereby authorized to pay service charges for, or for the right to, the use, occupancy, services or commodities of or furnished by any project or by any other service or auxiliary facility of the University, including the University Enterprises, and the income and receipts derived from such service charges paid by the University shall be deemed to be revenues under the provisions of this part and shall be applied and accounted for in the same manner as other revenues. (1961, c. 1078, s. 3.)

§ 116-41.4. Bonds authorized; amount limited; form, execution and sale; terms and conditions; use of proceeds; additional bonds; interim receipts or temporary bonds; replacement of lost, etc., bonds; approval or consent for issuance; bonds not debt of State.—The board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission,

at one time or from time to time, revenue bonds of the University for the purpose of undertaking and carrying out any project or projects hereunder; provided, however, that the aggregate principal amount of revenue bonds which the board is authorized to issue under this section during the biennium ending June 30, 1967, shall not exceed three million five hundred thousand dollars (\$3,500,000). The bonds shall be dated, shall mature at such time or times not exceeding thirty years from their date or dates, and shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, as may be determined by the board, and may be made redeemable before maturity at the option of the board at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form and manner of execution of the bonds, and any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this part or any recitals in any bonds issued under the provisions of this part, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the University, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six per centum (6%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the board may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the authorizing resolution, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds may also contain such limitations upon the issuance of additional revenue bonds as the board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Prior to the preparation of definitive bonds, the board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the board under the provisions of this part, subject to the approval of the Advisory Budget Commission, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those

consents, proceedings, conditions or things which are specifically required by this part.

Revenue bonds issued under the provisions of this part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds. (1961, c. 1078, s. 4; 1963, c. 944, s. 2; 1965, c. 1033, s. 2.)

Editor's Note. — The 1963 amendment substituted "1965" for "1963" near the end of the first sentence.

The 1965 amendment substituted "1967" for "1965" near the end of the first sen-

tence and substituted "three million five hundred thousand dollars (\$3,500,000)" for "two million five hundred thousand dollars (\$2,500,000)" at the end of that sentence.

§ 116-41.5. Contents of resolution authorizing issuance; powers liberally construed; deposit and use of revenues; rights and remedies of bondholders; service charges; insurance of projects; depositories. —The board in the resolution authorizing the issuance of bonds under this part may provide for a pledge to the payment of such revenue bonds and the interest thereon of the revenue derived from the project and also for a pledge of the revenues derived from any system, facility, plant, works, instrumentalities or properties improved, bettered, or extended by the project or otherwise within the jurisdiction of or operated by the University in connection with the University of North Carolina at Chapel Hill, North Carolina, the revenues derived from any future improvements, betterments or extensions of the project, the revenues derived from the University Enterprises, or any part thereof, or the revenues from the project and any or all of the revenues mentioned in this sentence, without regard to whether the operations involved are deemed governmental or proprietary, it being the purpose hereof to vest in the board broad powers which shall be liberally construed. So long as any revenues of the University mentioned in this paragraph are pledged for the payment of the principal of or interest on any bonds issued hereunder, such revenues shall be deposited in a special fund and shall be applied and used only as provided in the resolution authorizing such bonds, subject, however, to any prior pledge or encumbrance thereof.

The resolution authorizing the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the holders of the bonds, including covenants setting forth the duties of the University in relation to the construction of any project to be financed with the proceeds of said bonds, and to the maintenance, repair, operation and insurance of such project or any other project, systems, facilities, plants, works, instrumentalities, properties, the University Enterprises or any part thereof, if the revenues thereof are in any way pledged as security for the bonds; the fixing and revising of service charges and the collection thereof; and the custody, safeguarding and application of all moneys of the University pertaining to the project and the bonds, and all revenues pledged therefor. Notwithstanding the provisions of any other law, the board may carry insurance on any such project in such amounts and covering such risks as it may deem advisable. It shall be lawful for any bank or trust company incorporated under the laws of the State of North Carolina which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the board. Such resolution may set forth the rights and remedies of the bondholders and may restrict the individual right of action by bondholders. Such resolution may contain such other provisions in addition to the foregoing as the board may deem reasonable and proper for the security of the bondholders.

The board may provide for the payment of the proceeds of the bonds and any revenues pledged therefor to such officer, board or depository as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses in-

curred in carrying out the provisions of such resolutions may be treated as a part of the cost of operation. (1961, c. 1078, s. 5.)

§ 116-41.6. Pledge of revenues; lien.—All pledges of revenues under the provisions of this part shall be valid and binding from the time such pledges are made. All such revenues so pledged shall immediately upon receipt thereof be subject to the lien of such pledge without any physical delivery thereof or further action, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the University, irrespective of whether such parties have notice thereof. (1961, c. 1078, s. 6.)

§ 116-41.7. Proceeds of bonds, revenues, etc., deemed trust funds.—The proceeds of all bonds issued and all revenues and other moneys received pursuant to the authority of this part shall be deemed to be trust funds, to be held and applied solely as provided in this part. The resolution authorizing the issuance of bonds shall provide that any officer to whom, or bank, trust company or fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as such resolution may provide. (1961, c. 1078, s. 7.)

§ 116-41.8. Rights and remedies of bondholders.—Any holder of revenue bonds issued under the provisions of this part or of any of the coupons appertaining thereto, except to the extent that the rights herein given may be restricted by the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State of North Carolina, including this part, or under such resolution, and may enforce and compel the performance of all duties required by this part or by such resolution to be performed by the University or by any officer thereof or the board, including the fixing, charging and collecting of service charges. (1961, c. 1078, s. 8.)

§ 116-41.9. Refunding revenue bonds.—The University is hereby authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time refunding revenue bonds for the purpose of refunding any revenue bonds issued by the University under this part in connection with any project or projects, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The University is further authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time refunding revenue bonds for the combined purpose of

- (1) Refunding any revenue bonds or refunding revenue bonds issued by the University in connection with any project or projects including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and
- (2) Paying all or any part of the cost of any project or projects.

The issuance of such refunding revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the University with respect to the same, shall be governed by the foregoing provisions of this part insofar as the same may be applicable. (1961, c. 1078, s. 9.)

§ 116-41.10. Exemption from taxation.—The bonds issued under the provisions of this part and the income therefrom shall at all times be free from taxation within the State. (1961, c. 1078, s. 10.)

§ 116-41.11. Executive committee may be authorized to exercise powers and functions of board.—The board by resolution may authorize its

executive committee to exercise or perform any of the powers or functions vested in the board under this part. (1961, c. 1078, s. 11.)

§ 116-41.12. **Part provides supplemental and additional powers; compliance with other laws not required.**—This part shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or refunding revenue bonds under the provisions of this part need not comply with the requirements of any other law applicable to the issuance of bonds and provided, further, that all general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this part. (1961, c. 1078, s. 12.)

Part 5. Miscellaneous Provisions.

Editor's Note.—Former Part 4 was redesignated "Part 5" by Session Laws 1965, c. 31, s. 2, effective July 1, 1965.

§ 116-44.2. **Child development research and demonstration center.**—(a) The Chapel Hill city board of education is authorized to enter into long-term agreements and contracts with the University of North Carolina for the purpose of providing for the establishment and operation of a child development research and demonstration center. The board is additionally authorized to lease or transfer title to real and personal property, including buildings and equipment, with or without compensation, to the University for this purpose.

(b) If an elementary school meeting the requirements for accreditation established by the State Board of Education is operated in conjunction with the center such school shall receive financial support through the Chapel Hill city board of education from State, county, and administrative unit sources on the same basis as the other elementary schools in the Chapel Hill city administrative unit.

(c) All personnel of the center whose salaries are paid in whole or part from funds administered by the State Board of Education or the Chapel Hill city board of education, from whatever sources derived, shall be employed only upon the mutual concurrence of the superintendent of the Chapel Hill city administrative unit and the director of the center. (1965, c. 690.)

ARTICLE 2.

Western Carolina College, East Carolina College, Appalachian State Teachers College, Pembroke State College, Agricultural and Technical College of North Carolina, North Carolina College of Durham, Elizabeth City State College, Fayetteville State College, Winston-Salem State College, Asheville-Biltmore College, Wilmington College.

§ 116-45. Primary purpose of named institutions.

- (1) The primary purpose of Western Carolina College, East Carolina College, and Appalachian State Teachers College shall be the preparation of young men and women as teachers, supervisors, and administrators for the public schools of North Carolina, including the preparation of such persons for the master's degree. Said institutions may also offer instruction in the liberal arts and sciences including the preparation for the master's degree, and such other programs as are deemed necessary to meet the needs of its constituency and of the State and as shall be ap-

proved by the North Carolina Board of Higher Education, consistent with appropriations made therefor.

- (5) The primary purpose of Elizabeth City State College, Fayetteville State College, and Winston-Salem State College shall be the undergraduate preparation of young men and women for teaching in the public schools of the State. Such other programs may be offered as shall be approved by the North Carolina Board of Higher Education, consistent with the appropriations made therefor.
- (6) The primary purpose of Asheville-Biltmore College and Wilmington College shall be to provide undergraduate instruction in the liberal arts and sciences, the training of teachers, and such graduate, professional, and other undergraduate programs as are deemed necessary to meet the needs of their constituencies and of the State and as shall be approved by the North Carolina Board of Higher Education, consistent with appropriations provided therefor. (1957, c. 1142; 1963, cc. 421, 422; c. 448, s. 21; c. 507; 1965, c. 31, s. 3; c. 1096, s. 6½.)

Editor's Note.—

Session Laws 1963, c. 421, changed the name of "Winston-Salem Teachers College" to "Winston-Salem State College." Pursuant to Session Laws 1963, c. 422, codified as § 116-45.1, the name of "Elizabeth City State Teachers College" has been changed to "Elizabeth City State College." Session Laws 1963, c. 448, s. 21, effective July 1, 1963, added subdivision (6). Session Laws 1963, c. 507, changed the name of "Fayetteville State Teachers College" to "Fayetteville State College."

The first 1965 amendment, effective July 1, 1965, deleted "Charlotte College" from subdivision (6).

The second 1965 amendment, effective July 1, 1965, deleted "undergraduate" following "offer" near the beginning of the last sentence of subdivision (1), and inserted "including the preparation for the master's degree" following "sciences" in that sentence.

As the rest of the section was not affected by the amendments, it is not set out.

§ 116-45.1. Change of name of Elizabeth City State Teachers College to Elizabeth City State College.—Wherever the words "Elizabeth City State Teachers College" appear in any general, local or special act, the same shall be stricken out and the words "Elizabeth City State College" inserted in lieu thereof. (1963, c. 422.)

§ 116-45.2. Conversion of Asheville-Biltmore College and Wilmington College from junior to senior colleges.—(a) Asheville-Biltmore College and Wilmington College shall become public senior colleges on July 1, 1963, and thereupon they shall cease to be subject to the terms of the Community College Act (General Statutes, chapter 116, article 3) and shall become subject to the terms of the State Colleges Act (General Statutes, chapter 116, article 2). The addition of the third and fourth years of study shall, in each case, be made as promptly as is consistent with sound educational considerations, and in conformity with schedules which shall be prepared by the boards of trustees of the respective colleges and approved by the Board of Higher Education.

(b) On July 1, 1963, or as soon thereafter as is practicable, the Governor shall appoint new boards of trustees for Asheville-Biltmore College and for Wilmington College, in the numbers and for the terms specified in G. S. 116-46. The initial appointments to those three boards shall not be subject to confirmation by the General Assembly. On the earliest practicable date after their appointment, the members of the respective new boards of trustees shall convene on call of the Governor and proceed to organize.

(c) The existing board of trustees of Asheville-Biltmore College and the existing board of trustees of Wilmington College respectively shall, prior to July 1, 1963, execute proper legal instruments conveying to the new board of trustees of Asheville-Biltmore College and the new board of trustees of Wilmington College respectively, without consideration, all right, title, and interest of the grantors in

and to the property, both real and personal, of Asheville-Biltmore College and Wilmington College respectively, including all endowments, executory contracts, and unexpended State appropriations. Such conveyances shall take effect upon the appointments and organization of the respective new board of trustees. Upon their organization, the respective new boards of trustees shall accept formally the conveyance of such properties. The counties of Buncombe and New Hanover respectively shall continue to be solely liable for the repayment of all indebtedness incurred in aid of Asheville-Biltmore College and Wilmington College respectively. Provided, however, that funds heretofore appropriated to the Department of Administration under the provisions of article 3 of chapter 116 of the General Statutes, to be allocated to Asheville-Biltmore College and Wilmington College as matching funds for capital improvements in accordance with the provisions of G. S. 116-53 (b), which appropriated funds remain unexpended by reason of their not having been matched by local funds, shall not revert to the general fund until June 30, 1964, and may be allocated by the Advisory Budget Commission to Asheville-Biltmore College and Wilmington College prior to that date.

(d) The boards of commissioners of Buncombe County and New Hanover County respectively are authorized to continue to provide local financial support for the first two (2) years or junior college program of Asheville-Biltmore College and Wilmington College respectively for the fiscal years beginning July 1, 1963 and July 1, 1964, by levying a special tax to a maximum annual rate equal to the maximum annual rate last approved by the voters of those counties respectively for the support of Asheville-Biltmore College and Wilmington College, or by appropriations from non-tax revenue, or by both. Beginning not later than July 1, 1965, Asheville-Biltmore College and Wilmington College shall be financed in accordance with the Executive Budget Act (General Statutes, chapter 143, article 1). (1963, c. 448, s. 22; c. 956; 1965, c. 31, s. 3.)

Editor's Note.—Session Laws 1963, c. 448, inserting this section, became effective as of July 1, 1963.

The 1963 amendment added the proviso to subsection (c).

The 1965 amendment, effective July 1, 1965, deleted all references to Charlotte

College in subsections (a), (b) and (c), deleted "the board of trustees of the Charlotte Community College system" following "Asheville-Biltmore College" near the beginning of subsection (c) and deleted "Mecklenburg" following "Buncombe" in the fourth sentence of subsection (c).

§ 116-46.1. Motor vehicle laws applicable to streets, alleys and driveways on campus of Appalachian State Teachers College; college trustees authorized to adopt traffic regulations.—(a) All the provisions of chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the campus of the Appalachian State Teachers College. Any person violating any of the provisions of said chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the campus of Appalachian State Teachers College as is now vested by law in the trustees of Appalachian State Teachers College or town of Boone.

(b) The board of trustees of Appalachian State Teachers College is authorized to make such additional rules and regulations and adopt such additional ordinances with respect to the use of the streets, alleys, driveways, and to the establishment of parking areas on such campus not inconsistent with the provisions of chapter 20, General Statutes of North Carolina, and the ordinances of the town of Boone, as in its opinion may be necessary. All regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the board and printed, and copies of such regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any such regulations or ordinances shall, upon conviction thereof, be guilty

of a misdemeanor, and shall be punishable by a fine of not exceeding fifty dollars (\$50.00) or imprisonment for not exceeding 30 days.

(c) The board of trustees of Appalachian State Teachers College shall cause to be posted at appropriate places on the campus of Appalachian State Teachers College notice to the public of applicable speed limits and parking laws and ordinances. (1961, c. 563.)

§ 116-46.2. Purchase of annuity or retirement income contracts for faculty members, officers and employees.—Notwithstanding any provision of law relating to salaries and/or salary schedules for the pay of faculty members, administrative officers, or any other employees of universities, colleges and institutions of higher learning as named and set forth in articles 1 and 2 of chapter 116 of the General Statutes, as amended, and other State agencies qualified as educational institutions under § 501(c) (3) of the United States Internal Revenue Code, the board of trustees of any such universities, colleges and institutions of higher learning may authorize the business officer or agent of same to enter into annual contracts with any of the faculty members, administrative officers and employees of said institutions of higher learning which provide for a reduction in salary below the total established compensation or salary schedule for a term of one (1) year. The financial officer or agent shall use the funds derived from the reduction in the salary of the faculty member, administrative officer or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said faculty member, administrative officer or employee of said universities, colleges and institutions of higher learning. A faculty member, administrative officer or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the faculty member, administrative officer or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the various boards of trustees of the various institutions of higher learning and on forms prepared by said boards of trustees. Notwithstanding any other provision of this section or law, the amount by which the salary of any faculty member, administrative officer or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes. (1965, c. 365.)

§ 116-46.3. Participation in sixth-year program of graduate instruction for superintendents, assistant superintendents, and principals of public schools.—Notwithstanding any other provision of law or the regulations of any administrative agency the educational institutions of East Carolina College, North Carolina College of Durham, Appalachian State Teachers College, and Western Carolina College, are hereby authorized and shall be eligible colleges to participate in the sixth-year program adopted by the State Board of Education February 4, 1965, to provide a minimum of 60 semester hours of approved graduate, planned, nonduplicating instruction not beyond the masters degree for the education of superintendents, assistant superintendents, and principals of public schools. The satisfactory completion of such program and instruction shall qualify a person for the same certificate and stipend as now provided for other eligible educational institutions. (1965, c. 632.)

§ 116-46.4. School of medicine authorized at East Carolina College; meeting requirements of accrediting agencies.— The board of trustees of East Carolina College is hereby authorized to create a school of medicine at East Carolina College, Greenville, North Carolina.

The school of medicine shall meet all requirements and regulations of the Council on Medical Education and Hospitals of the American Medical Association, The Association of American Medical Colleges, and other such accrediting agencies whose approval is normally required for the establishment and operation of a two-year medical school. (1965, c. 986, ss. 1, 2.)

Editor's Note.—Section 4 of the act inserting this section provides that if the conditions imposed by ss. 3 and 4 of the act (as to appropriations) have not been met by Jan. 1, 1967, and accreditation granted, the Board of Higher Education

shall study the proposal for an East Carolina College medical school and first give its approval before the college continues or implements a program for a two- or four-year school of medicine.

ARTICLE 3.

Community Colleges.

§ 116-47. Short title.

Applied in *Wynn v. Trustees of Charlotte Community College System*, 255 N. C. 594, 122 S. E. (2d) 404 (1961).

§ 116-48. **Purpose.**—The purpose of this article is to provide a plan of organization and operation for community colleges, to serve as a legislative charter for such colleges, and to authorize the levy of taxes and issuance locally of bonds for the support thereof. Provided, no additional community colleges shall be organized or operated pursuant to the provisions of this article after the effective date of chapter 115A of the General Statutes of North Carolina, "Community Colleges, Technical Institutes, and Industrial Education Centers." (1957, c. 1098, s. 2; 1963, c. 448, s. 25.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, added the proviso.

Chapter 115A of the General Statutes is also effective as of July 1, 1963.

§ 116-49. Definitions.

System May Consist of More Than One Unit.—This section expressly authorizes a community college system to establish two units. *Wynn v. Trustees of Charlotte Community College System*, 255 N. C. 594, 122 S. E. (2d) 404 (1961).

At Different Locations. — A board of trustees has full authority to establish two community colleges in different locations and as separate units. *Wynn v. Trustees of Charlotte Community College System*, 255 N. C. 594, 122 S. E. (2d) 404 (1961).

§ 116-53. Appropriations by State.

(b) Appropriations by the State of North Carolina for capital or permanent improvements for community colleges shall, except when the Appropriation Act specifically provides otherwise, be on an equal matching fund basis, the monies raised by a particular community college from public or private sources being matched by an equal amount of State funds, up to but not in excess of appropriations therefor. The sole purposes for which such appropriations may be expended shall be to acquire real property and to construct and equip classrooms, laboratories, administration offices, utility plants, libraries, cafeterias, physical education instructional facilities, and auditorium facilities, in such order of priority as the Board of Higher Education and the Advisory Budget Commission shall determine. Such appropriations shall not be expended for any other purpose, it being expressly intended that the construction of all other facilities and procurement of all other equipment shall be the sole obligation and responsibility of the community college.

Preliminary studies and cost estimates for the construction of all buildings or other capital improvements and proposals for the purchase of all original equipment to be installed or used therein, involving the expenditure of State funds, shall be first submitted to and approved by the Board of Higher Education and the State Budget Bureau.

After approval by the Board of Higher Education and the Budget Bureau, payments shall be made by the State disbursing officer to the community college, within authorized appropriations, according to procedures established by the Budget Bureau. (1957, c. 1098, s. 7; 1961, c. 1099.)

Editor's Note.—The 1961 amendment inserted after the comma following the word "cafeterias" in line eight of subsection (b) the words "physical education instructional facilities." Only subsection (b) is set out.

§ 116-55. Disposition of proceeds of local bond issue.

Funds May Be Used for More Than One Unit.—The expenditure of public funds to provide necessary facilities and services at each of two units is not an expenditure for an illegal or unauthorized purpose. *Wynn v. Trustees of Charlotte Community College System*, 255 N. C. 594, 122 S. E. (2d) 404 (1961), holding taxpayers were not entitled to enjoin construction of a separate unit.

Taxpayer May Not Object Because Unit Racially Segregated.—Plaintiffs alleged the use of bond proceeds for the construction of a unit of a community college system was for an illegal and unauthorized purpose on the ground it would be operated as a

racially segregated public college facility in violation of the Fourteenth Amendment of the Constitution of the United States. Plaintiffs and all other property owners were subject to the ad valorem tax levied to provide funds for the payment of the bonds. No fact alleged indicated plaintiffs would be otherwise affected by the construction and operation of the college. Upon the facts alleged, no constitutional right of plaintiffs was denied. A constitutional question may not be raised by one whose rights are not directly and certainly affected. *Wynn v. Trustees of Charlotte Community College System*, 255 N. C. 594, 122 S. E. (2d) 404 (1961).

§ 116-62.1. Motor vehicle laws applicable to streets, alleys and driveways on campus of Chowan College; college trustees authorized to adopt traffic regulations.—(a) All the provisions of chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the campus of Chowan College. Any person violating any of the provisions of said chapter in or on such streets, alleys or driveways on the campus of Chowan College shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the campus of Chowan College as is now vested by law in the trustees of Chowan College or town of Murfreesboro.

(b) The board of trustees of Chowan College is authorized to make such additional rules and regulations and adopt such additional ordinances with respect to the use of the streets, alleys, driveways, and to the establishment of parking areas on such campus not inconsistent with the provisions of chapter 20, General Statutes of North Carolina, and the ordinances of the town of Murfreesboro, as in its opinion may be necessary. All regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the board and printed, and copies of such regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any such regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punishable by fine of not exceeding fifty dollars (\$50.00) or imprisonment for not exceeding thirty days.

(c) The board of trustees of Chowan College shall cause to be posted at appropriate places on the campus of Chowan College notice to the public of applicable speed limits and parking laws and ordinances. (1965, c. 688.)

ARTICLE 4.

School for Professional Training in Performing Arts.

§ 116-63. Policy.—It is hereby declared to be the policy of the State to foster, encourage and promote, and to provide assistance for, the cultural development of the citizens of North Carolina, and to this end the General As-

ssembly does create and provide for a training center for instruction in the performing arts. (1963, c. 1116.)

§ 116-64. Establishment of school.—There is hereby established, and there shall be maintained, a school for the professional training of students having exceptional talent in the performing arts which shall be defined as an educational institution of the State, to serve the students of North Carolina and other states, particularly other states of the South. (1963, c. 1116.)

§ 116-65. Board of trustees to govern; appointment of members; terms; officers; title of board; powers generally.—The school shall be governed by a board of trustees consisting of twelve members, appointed by the Governor, who will serve terms of six (6) years, except that, of the first board of trustees appointed pursuant to this article, four members of the said board of trustees shall serve for terms of six (6) years, four members shall serve for terms of four (4) years, and four members shall serve for terms of two (2) years, with all terms to commence on July 1 of the year in which the members shall be appointed. The conductor of the North Carolina Symphony shall be an ex officio member of the board of trustees. In the event of a vacancy arising, the Governor shall appoint a member to fill the vacancy for the unexpired term.

The board of trustees shall elect annually from their number a chairman and a vice-chairman. The board shall also elect a secretary and a treasurer, who may, but need not be, a member of the board of trustees, and the offices of secretary and treasurer may be held by the same person. The meeting for the election of officers shall be held not earlier than July 1 and not later than September 1 of each year. Officers shall be elected to serve for terms of one (1) year, and until their successors are elected and qualified. The board of trustees shall be known as "The Trustees of" (here insert name of school) and shall be a body corporate, with all the powers usually conferred upon such bodies and necessary to enable it to acquire, hold and transfer property, make contracts, sue and be sued, and to exercise such other rights and privileges as may be necessary for the management and administration of the school, and for carrying out the provisions and purposes of this article. (1963, c. 1116.)

§ 116-66. Enumerated powers of board. — The trustees of the said school shall have authority, in the exercise of which they shall be advised and assisted by the State Board of Education and the State Board of Higher Education, as the level of training programs for high school and college students in the school may require, and by the advisory board of the school:

- (1) To meet, as soon as practicable after appointment, to consider sites which may be offered as a location for the school. From all sites offered, the board of trustees shall recommend to the Governor that site considered most suitable as the location for the said school, and shall, upon the Governor's approval of that site, or of some subsequently recommended site, and pursuant to the authority herein granted to it, establish the school at that approved site.
- (2) To select an appropriate name for the school which shall be acceptable to the Governor and the advisory board, and to supporting donors.
- (3) To receive and accept private donations for such purposes and upon such terms as the donor may prescribe and which are consistent with the provisions of this article.
- (4) To employ a president, dean or other chief administrative officer of the school, who shall be preferably a noted composer or dramatist, upon such terms and conditions as the trustees shall fix and determine.
- (5) To employ, or to authorize the chief administrative officer to employ, subject to the approval of the trustees, all such other officers, teachers,

- instructors and employees as may be necessary for the operation of the school and to prescribe their titles and duties, the chief criteria to be their excellence in the performing arts and their professional standing therein, rather than academic degrees and training.
- (6) To prescribe, with the advice and approval of the State Board of Education and the State Board of Higher Education, as appropriate, and in consultation with the advisory board of the school, the curricula which shall be offered, and the certificates or degrees which shall be awarded upon satisfactory completion of any given course of study.
 - (7) To do all things necessary or proper to comply with any conditions which may be prescribed by the State of North Carolina or the United States of America in order to be eligible to receive monies or other assistance appropriated or designated for the benefit of such institutions.
 - (8) To fix tuition, fees, and other charges for students attending or applying for attendance at the school.
 - (9) To prescribe and require the use of entrance examinations, so that professional training shall be made available only to those students who possess exceptional talent in the performing arts.
 - (10) In conformity with the provisions of article I of chapter 143 of the General Statutes, entitled "The Executive Budget Act," to provide for an adequate system of accounting for all funds and property received, held, managed, expended or used by the school, and to require persons directly responsible for the handling of such funds to be adequately bonded.
 - (11) To utilize, pursuant to agreement with institutions of higher education or with any local administrative school unit, existing facilities and such academic nonarts courses and programs of instruction which will be needed by the students of the school, and, in their discretion, to employ personnel jointly with any such unit on a cooperative, cost sharing basis.
 - (12) To hold in trust for the State of North Carolina title to all property which may be acquired by the said board for the benefit of the school.
 - (13) To provide for the management of all the affairs of the school, subject to the applicable laws of the State, and particularly subject to the provisions of the Executive Budget Act, and to provide for the handling and expenditure of all monies whatsoever belonging to, appropriated to, or in any way acquired by the said institution or board of trustees; to provide for the erection of all buildings, the making of all needed improvements and the maintenance of the physical plant of said school.
 - (14) To confer and cooperate with the Southern Regional Education Board and with other regional and national organizations to obtain wide support and to establish the school as the center in the South for the professional training and performance of artists.
 - (15) To perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of all reasonable rules, regulations and bylaws for the government and operation of the school under this article and for the discipline of students. (1963, c. 1116.)

§ 116-67. Advisory board.—An advisory board, to consist of at least ten members who shall have achieved national, or international distinction as performers, playwrights, or composers, shall be appointed by the Governor, to serve for terms of eight (8) years each; provided, that of the original advisory board, one third shall be appointed for terms of eight (8) years, one third shall be appointed for terms of six (6) years, and one third shall be appointed for terms of four (4) years. The members of the advisory board shall be notified of all meet-

ings of the board of trustees, and shall be invited to attend such meetings and to advise and counsel with the board of trustees, but the members of the advisory board shall not be entitled to vote. Vacancies arising on the said advisory board shall be filled by election of replacement members by the advisory board, with the approval of the Governor, for terms of eight (8) years, or, if to fill a vacancy arising during an unexpired term, for the remainder of the term of the vacating member. (1963, c. 1116.)

§ 116-68. **Endowment fund.**—The board of trustees is authorized to establish a permanent endowment fund, and shall perform such duties in relation thereto as are prescribed by the provisions of G. S. 116-46 (7). (1963, c. 1116.)

§ 116-69. **Purpose of school program.** — The primary purpose of the school shall be the professional training, as distinguished from liberal arts instruction, of talented students in the fields of music, drama, the dance, and allied performing arts, at both the high school and college levels of instruction, with emphasis placed upon performance of the arts, and not upon academic studies of the arts. The said school may also offer high school and college instruction in academic subjects, and such other programs as are deemed necessary to meet the needs of its students and of the State, consistent with appropriations made and gifts received therefor, and may cooperate, if it chooses, with other schools which provide such courses of instruction. The school, on occasion, may accept elementary grade students of rare talent, and shall arrange for such students, in cooperation with an elementary school, a suitable educational program. (1963, c. 1116.)

§ 116-70. **Applicable statutes.**—All of the powers, duties and responsibilities herein conferred shall be subject to the provisions of article 1, chapter 143 of the General Statutes, entitled "Executive Budget Act," and article 2, chapter 143 of the General Statutes, entitled "State Personnel Department." (1963, c. 1116.)

ARTICLE 5.

Loan Fund for Prospective College Teachers.

§ 116-71. **Purpose of article.**—The purpose of this article is to encourage, assist, and expedite the postgraduate level education and training of competent teachers for the public and private universities, colleges and technical institutes in this State by the granting of loans to finance such study. The funds shall be used to increase the number of teaching faculty as distinguished from research specialists. (1965, c. 1148, s. 1.)

Editor's Note. — Section 3 of the act adding this article makes it effective July 1, 1965.

§ 116-72. **Fund established.**—There is established a loan fund for prospective college teachers to assist capable persons to pursue study and training leading to masters or doctorate degrees in preparation to become teachers in the public and private institutions of education beyond the high school in North Carolina. Both private and public sources may be solicited in the creation of the fund. (1965, c. 1148, s. 1.)

§ 116-73. **Joint committee for administration of Fund; rules and regulations.**—"The Scholarship Loan Fund for Prospective College Teachers" shall be the responsibility of the State Board of Higher Education and the State Board of Education and will be administered by them through a joint committee, "The College Scholarship Loan Committee." This committee will operate under the following rules and regulations and under such further rules and regulations as the State Board of Higher Education and the State Board of Education shall jointly promulgate.

- (1) The nomination of applicants and recommendations of renewals shall be the responsibility of the College Scholarship Loan Committee.
- (2) Loans should be made for a single academic year (nine months) with renewal possible for two successive years for students successfully pursuing masters or doctoral programs. Loans shall not exceed two thousand dollars (\$2,000.00) for single students and three thousand dollars (\$3,000.00) for married students.
- (3) All scholarship loans shall be evidenced by notes, with sufficient sureties, made payable to the State Board of Education and shall bear interest at the rate of four per cent (4%) per annum from and after September 1 following the awarding of the candidate's degree.
- (4) Recipients of loans may have them repaid by teaching in a college or other educational institution beyond the high school level in North Carolina upon completion of their masters or doctorate degree program, at the rate of one hundred dollars (\$100.00) per month for each month of such teaching. If a student supported by a loan in this program should fail to so teach in a North Carolina institution, the loan would become repayable to the State, with interest, for that part of the teaching commitment not met, said note to be repaid according to the terms thereof.
- (5) Loans for twelve weeks of summer study, carrying stipends not to exceed five hundred dollars (\$500.00) for single and married students, should be available to students who do not plan to attend postgraduate school as full-time students during the regular academic year. Recipients should be eligible for up to three renewals over a four-year period. The obligation to teach in a North Carolina college or other educational institution, or failing that, to repay the State, shall apply proportionally as indicated above. (1965, c. 1148, s. 1.)

§ 116-74. **Duration of Fund; use of repaid loans and interest.**—The Scholarship Loan Fund for Prospective College Teachers shall continue in effect until terminated by action of the General Assembly of North Carolina. Such amounts of loans as shall be repaid from time to time under the provisions of this article, together with such amounts of interest as may be received on account of loans made shall become a part of the principal amount of said Loan Fund. These funds shall be administered for the same purposes and under the same provisions as are set forth herein to the end that they may be utilized in addition to such further amounts as may be privately donated or appropriated from time to time by public or corporate bodies. (1965, c. 1148, s. 1.)

ARTICLE 10.

State School for the Blind and the Deaf in Raleigh.

§§ 116-105 to 116-119: Transferred to §§ 115-321 to 115-335 by Session Laws 1963, c. 448, s. 28, effective July 1, 1963.

ARTICLE 11.

North Carolina School for the Deaf at Morganton.

§ 116-120: Transferred to § 115-336 by Session Laws 1963, c. 448, s. 28, effective July 1, 1963.

§§ 116-121 to 116-124: Repealed by Session Laws 1963, c. 448, s. 28, effective July 1, 1963.

§ 116-124.1: Transferred to § 115-342 by Session Laws 1963, c. 448, s. 28, effective July 1, 1963.

§ 116-125: Transferred to § 115-343 by Session Laws 1963, c. 448, s. 28, effective July 1, 1963.

ARTICLE 11A.

Eastern North Carolina School for the Deaf and North Carolina School for the Deaf at Morganton.

§§ 116-125.1 to 116-125.5: Transferred to §§ 115-337 to 115-341 by Session Laws 1963, c. 448, s. 28, effective July 1, 1963.

ARTICLE 12.

The Caswell School.

§§ 116-126 to 116-137: Repealed by Session Laws 1963, c. 1184, s. 7, effective July 1, 1963.

Editor's Note.—The repealed sections to be article 8 of chapter 122. For present had been transferred by Session Laws provisions as to centers for mentally retarded, see article 9 of chapter 122.

ARTICLE 13.

Colored Orphanage of North Carolina.

§§ 116-138 to 116-142: Transferred to §§ 115-344 to 115-348 by Session Laws 1963, c. 448, s. 28, effective July 1, 1963.

ARTICLE 13A.

Negro Training School for Feeble-Minded Children.

§§ 116-142.1 to 116-142.10: Repealed by Session Laws 1963, c. 1184, s. 8, effective July 1, 1963.

Editor's Note.—The repealed sections 1963, c. 448, s. 29, effective July 1, 1963, had been transferred by Session Laws to be article 9 of chapter 122.

ARTICLE 14.

General Provisions as to Tuition Fees in Certain State Institutions.

§ 116-143. **State-supported institutions of higher education required to charge tuition fees.**—Each of the board of trustees of the several institutions of higher education provided for in articles 1, 2, and 3 of chapter 116 shall fix the tuition and fees for the institution or institutions under its control, in such amount or amounts as it may deem best, taking into consideration the nature of each institution and program of study and the cost of equipment and maintenance; and each board shall charge and collect from each student, at the beginning of each semester or quarter, tuition, fees, and an amount sufficient to pay other expenses for the term.

In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this article that all students in State institutions of higher learning shall be required to pay tuition, and that free tuition is hereby abolished.

Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except where expressly authorized by statute; and, furthermore, it

is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports.

Where an individual serves as a faculty member on a part-time basis and is enrolled at the same time as a part-time student, a special tuition rate not lower than the North Carolina resident rate may be granted in the discretion of the board of trustees of the institution.

Notwithstanding the above provision relating to the abolition of free tuition, the said boards of trustees of the institutions of higher education provided for in articles 1 and 2 of chapter 116 may, in their discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member, may during the period of normal employment enroll for courses in their respective institutions free of charge for tuition, provided such enrollment does not interfere with normal employment obligations. (1933, c. 320, s. 1; 1939, cc. 178, 253; 1949, c. 586; 1961, c. 833, s. 16.1; 1963, c. 448, s. 27.1; 1965, c. 903.)

Editor's Note.—

The 1961 amendment, effective July 1, 1961, deleted the last sentence of the first paragraph relating to indigent cripples, struck out the latter part of the second paragraph relating to physically disabled

students and added the second and third paragraphs.

The 1963 amendment, effective July 1, 1963, rewrote the first paragraph.

The 1965 amendment added the last paragraph.

ARTICLE 15.

Educational Advantages for Children of World War Veterans.

§ 116-149. Definitions.—(a) As used in this article, "veteran" means a person who served as a member of the armed forces of the United States at any time between April 6, 1917, the date of the declaration of war with respect to the war known as World War I, and July 2, 1921, or between December 7, 1941, the date of the declaration of war with respect to the war known as World War II, and December 31, 1946, and who was separated from the armed forces under conditions other than dishonorable. A person who was separated from the armed forces under conditions other than dishonorable and whose death or disability was incurred (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service including such service under conditions simulating war, shall also be deemed a "veteran" and such death or disability shall be considered war-time service-connected.

(b) As used in this article, "eligible child" means:

- (1) A child of a veteran who was a legal resident of North Carolina at the time of said veteran's entrance into the armed forces, or
- (2) A veteran's child who was born in North Carolina and has lived in North Carolina continuously since birth. Provided, that the requirement in the preceding sentence as to birth in North Carolina be waived by the North Carolina Veterans Commission if it is shown to the satisfaction of the Commission that the child's mother was a native born resident of North Carolina and was such resident at the time of her marriage to the veteran and was outside the State temporarily at the time of the child's birth, following which the child was returned to North Carolina within a reasonable period of time where said child has since lived continuously.
- (3) A child meeting either of the requirements set forth in subdivisions (1) and (2) above, and who was legally adopted by the veteran prior to or during such military service in which such veteran served and/or became disabled or died. (1951, c. 1160, s. 1; 1955, c. 469; 1963, c. 384, s. 1; 1965, c. 749, s. 1.)

Editor's Note.—

The 1963 amendment added the proviso to subsection (b) (2).

The 1965 amendment added the last sentence in subsection (a).

As the rest of the section was not affected by the amendments, it is not set out.

This State has attempted to provide for the education of children of her quota of disabled veterans; that is, those veterans who were residents of this State at the time they were inducted or whose children were born and remained in the State, and, prima facie, this is a reasonable distinction. *Ramsey v. North Carolina Veterans Comm'n*, 261 N.C. 645, 135 S.E.2d 659 (1964).

And it was not the purpose of the General Assembly to impose the burden of another state's quota upon the taxpayers of this State. *Ramsey v. North Carolina Veterans Comm'n*, 261 N.C. 645, 135 S.E.2d 659 (1964).

Constitutionality of Subsection (b). —

§ 116-149.1. "State educational institution" defined to include community college. —The term "State educational institution" as referred to in this article is hereby defined to include any community college operated under the provisions of article 3 of this chapter of the General Statutes of North Carolina. (1965, c. 1160.)

§ 116-150. **Scholarship.**—A scholarship granted pursuant to this article shall consist of free tuition, room and a reasonable board allowance in any State educational institution and such other items and institutional services as are embraced within the so-called institutional matriculation fees and other special fees and charges required to be paid as a condition to remaining in said institution and pursuing the course of study selected: Provided, the scholarships awarded under the one hundred per cent (100%) service-connected disability provision, as the same appears in G.S. 116-151(1) shall be limited to free tuition only.

Every applicant for benefits pursuant to this section shall furnish a statement from the United States Veterans Administration stating such facts as the Administration records disclose showing that the applicant comes within the provisions of this article.

A scholarship granted pursuant to this article shall not extend for a longer period than four academic years with respect to any one child, which years, however, need not be consecutive. (1951, c. 1160, s. 1; 1965, c. 392, s. 1.)

Editor's Note. — The 1965 amendment, effective Sept. 1, 1965, added the proviso at the end of the first paragraph.

§ 116-151. **Classes of eligible children entitled to scholarships.**—An eligible child shall be entitled to and granted a scholarship as provided by this article if such child falls within the provisions of any one of the three classes described below, subject to any limitations set out therein. The North Carolina Veterans Commission shall determine the eligibility of applicants, select the scholarship recipients and maintain necessary records on scholarship applications and awards.

- (1) Class I: Any eligible child whose father was killed in action or died from wounds or other causes while a member of the armed forces

during either period of military service or under the conditions of military service described in § 116-149, or whose father has died as a direct result of injuries, wounds, or other illness contracted during said service, or any eligible child whose father is or was a veteran who, at the time the benefits pursuant to this article are sought to be availed of, is suffering from, or who at the time of his death was suffering from, one hundred per cent (100%) wartime service-connected disability, as rated by the United States Veterans Administration, and who is or was drawing compensation for such disability.

- (2) Class II: Any eligible child whose father is or was a veteran, who at the time the benefits pursuant to this article are sought to be availed of, is suffering from, or who at the time of his death, was suffering from, a wartime service-connected disability of thirty per cent (30%) or more, but less than one hundred per cent (100%), as rated by the United States Veterans Administration; or any eligible child whose father is or was a veteran and was a prisoner of war for a period of at least six (6) months and who was wounded in combat against an enemy of the United States of America during the time of war and is or was at the time of his death suffering from a service-connected disability of twenty per cent (20%) or more as rated by the United States Veterans Administration; provided that benefits pursuant to § 116-150 for this class of eligible children shall be limited to not more than one hundred (100) eligible children in any one school year; provided further that a lesser number may be selected in the discretion of the North Carolina Veterans Commission. A statutory award for tuberculosis, pulmonary, arrested, shall be considered as meeting the criteria of disability as set forth with respect to this class.
- (3) Class III. Any eligible child whose father is or was a veteran who, at the time the benefits pursuant to this article are sought to be availed of, is suffering from, or who at the time of his death was suffering from, one hundred per cent (100%) nonservice-connected disability, as rated by the United States Veterans Administration, and who is or was drawing compensation for such disability; provided that benefits pursuant to § 116-150 for this class of eligible children shall be limited to not more than fifty (50) children in any one school year; provided further that a lesser number may be selected in the discretion of the North Carolina Veterans Commission. (1951, c. 1160, s. 1; 1955, c. 1192; 1963, c. 384, s. 2; 1965, c. 392, ss. 2-4; c. 749, ss. 2, 3.)

Editor's Note.—

The 1963 amendment inserted the second sentence of the first paragraph. It also rewrote subdivision (2) and the latter part of subdivision (3).

Sections 2 and 3 of c. 392, Session Laws 1965, inserted "wartime" preceding "service-connected" near the end of subdivision (1) and near the beginning of subdivision (2) and inserted "but less than one hundred per cent (100%)" near the beginning of subdivision (2). Section 4 of c. 392 substituted "one hundred (100)" for "fifty

(50)" in the first proviso at the end of the first sentence in subdivision (2). The provisions of ss. 2 and 3 were made effective Sept. 1, 1965.

Sections 2 and 3 of c. 749, Session Laws 1965, substituted "period of military service or under the conditions of military service" for "period of military services" near the beginning of subdivision (1), and in the same subdivision deleted "period of" formerly appearing between "said" and "service."

ARTICLE 16.

State Board of Higher Education.

§ 116-155. **Definitions.**—As used herein: "Board" refers to the North Carolina Board of Higher Education.

"Higher education" refers to all educational and instructional curricula and services in the university system and the senior colleges.

"Institutions of higher education" and "such institutions" refer to all senior institutions of higher education now existing or hereafter established supported wholly or in part by direct appropriations of the North Carolina General Assembly.

"Senior colleges" refers to all State supported four-year colleges, except the university system. (1955, c. 1186, s. 2; 1965, c. 1096, s. 1.)

Editor's Note. — The 1965 amendment, effective July 1, 1965, substituted "in the university system and the senior colleges" for "beyond the twelfth grade or its equivalent" in the definition of "Higher education," inserted "senior" in the definition of "Institutions of higher education," and added the definition of "Senior colleges."

§ 116-156. Membership; appointment, term and qualifications; vacancies.—The Board shall consist of fifteen citizens of North Carolina, one of whom shall be a member of the State Board of Education to be appointed by the Governor, eight of whom shall be appointed by the Governor to represent the public at large, but none of whom shall be officers or employees of the State, or officers, employees or trustees of the institutions of higher education, four of whom shall be selected by the boards of trustees of state-supported senior colleges, and two of whom shall be selected by the board of trustees of the University, provided, no trustee member shall be a member of the General Assembly. The four senior colleges, whose trustees shall select one of their members as a Board member to serve for a two-year term, shall be selected by the Governor in such order of rotation as he may choose every two years; provided, that the right of selection of such Board member shall be rotated among all institutions equally.

Members of the Board other than the six selected by the trustees of institutions shall be appointed by the Governor for terms of six years, except that of the first Board appointed, three members shall serve for two years, three shall serve for four years and three for six years. Terms of all members of the first Board so selected shall commence July 1, 1965.

All regular appointments, except appointments to the first Board, shall be subject to confirmation by the House of Representatives and the Senate in joint session assembled. The Governor shall forward all such appointments, except those of the first Board, to the General Assembly before the fortieth legislative day of each regular session. The Governor shall, without such confirmation, appoint members to fill vacancies for unexpired terms.

Appointees to the Board shall be selected for their interest in and ability to contribute to the fulfillment of the purpose of the Board. All members of the Board shall be deemed members-at-large, charged with the responsibility of serving the best interests of the whole State. (1955, c. 1186, s. 3; 1965, c. 1096, s. 2.)

Editor's Note. — The 1965 amendment, effective July 1, 1965, rewrote this section.

§ 116-158. Powers and duties generally.—The Board shall have the following specific powers and duties, in the exercise and performance of which it shall be subject to the provisions of article 1, chapter 143 of the General Statutes except as herein otherwise provided:

- (1) The primary function of the Board of Higher Education shall be to plan and coordinate the major educational functions and activities of higher education in the State and to allot the functions and activities of the institutions of higher education in addition to the purposes specified in articles 1 and 2 of chapter 116 of the General Statutes. The Board shall not, however, allot to any senior college the right to award the doctor's degree. The Board shall give the Governor, the General Assembly and the various institutions advice on higher education policy and problems.

- (2) In carrying out the duties prescribed in subdivision (1) hereof and subject thereto, the Board shall determine the types of degrees which shall be granted by each of such institutions.
- (3) The Board shall cause to be made such visits to the institutions as it shall deem necessary and proper in the performance of its duties.
- (4) The Board shall prescribe uniform statistical reporting practices and policies to be followed by such institutions where it finds such uniformity will promote the purpose of the Board.
- (5) Subject to the provisions of subdivision (1), all institutions included in the State System of Higher Education shall conform to the educational functions and activities assigned to them respectively; provided, that the Board shall not require any institution to abandon or discontinue any existing educational functions or activities, if, after notice and hearing, the institution is not in agreement with the decision of the Board, until such decision is first recommended to and approved by the General Assembly.
- (6) Each institution shall furnish the Board a copy of its biennial budget requests and related data at the same time said requests are furnished to the Advisory Budget Commission. The Board shall review the institutional budget requests to determine whether the same are consistent with the primary purposes of the institution and with the functions and activities allocated to the institution by statute or by the Board. The Board shall concentrate on broad fiscal policy and avoid a line-by-line detailed review of budget requests. The Board shall advise the Advisory Budget Commission and the institution of any budget requests inconsistent with the purposes and allocated functions and activities.
- (7) Any requests of an institution for transfers and changes as between objects and items in the approved budget of such institution and involving the establishment of new educational functions or activities shall be submitted to the Board of Higher Education for review to determine the compatibility of the request with the assigned functions of the respective institution.
- (8) The Board shall possess such powers as are necessary and proper for the exercise of the foregoing specific powers, including the power to make and enforce such rules and regulations as may be necessary for effectuating the provisions of this article. (1955, c. 1186, s. 5; 1959, c. 326, ss. 2-7; 1965, c. 1096, s. 3.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, rewrote this section.

§ 116-159. Board's decisions limited by appropriations. — The exercise of the powers conferred on the Board and its decisions of an educational nature shall be made by the Board within the limits of appropriated funds and fiscal availability. (1955, c. 1186, s. 6; 1965, c. 1096, s. 4.)

Editor's Note. — The 1965 amendment, provision pertaining to approval of fiscal effective July 1, 1965, deleted a former decisions by the Director of the Budget.

§ 116-160. Hearings concerning proposed action.—Before final action is taken by the Board in the exercise of powers conferred by § 116-158, the presidents and such persons as they may designate shall, upon request, be granted an opportunity to be heard by the Board concerning the proposed action. (1955, c. 1186, s. 7; 1959, c. 326, s. 8; 1965, c. 1096, s. 5.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, deleted former references to subdivisions of § 116-158, and inserted "upon request."

§ 116-161. Licensing of institutions; regulation of degrees.—(a) No educational institution created or established in this State after April 15, 1923,

by any person, firm, or corporation shall have power or authority to confer degrees upon any person except as provided in this section.

(b) The Board of Higher Education, under such standards as it shall establish, may issue its license to confer degrees in such form as it may prescribe to an educational institution established in this State after April 15, 1923, by any person, firm, organization, or corporation; but no educational institution established in the State subsequent to that date shall be empowered to confer degrees unless it has income sufficient to maintain an adequate faculty and equipment sufficient to provide adequate means of instruction in the arts and sciences, or any other recognized field of learning or knowledge.

(c) All institutions licensed under this section shall file such information with the Director of Higher Education as the Board of Higher Education may direct, and the Board may evaluate any institution applying for a license to confer degrees under this section. If any such institution shall fail to maintain the required standards, the Board of Higher Education shall revoke its license to confer degrees, subject to a right of review of this decision in the manner provided in §§ 143-306 through 143-316.

(d) The State Board of Education shall have sole authority to administer and supervise, at the State level, the system of community colleges, technical institutes, and industrial education centers provided in chapter 115A, and shall regulate the granting of appropriate awards and marks of distinction by those institutions. (1955, c. 1186, s. 8; 1963, c. 448, s. 26.)

Editor's Note. — The 1963 amendment, effective July 1, 1963, rewrote this section.

§ 116-163. Office space; Director of Higher Education; review of actions of Director; other employees.—In order to effectuate the provisions of this article, the Board shall be furnished suitable quarters in Raleigh, and shall, subject to the approval of the Governor, appoint a full-time Director of Higher Education. The salary of the Director of Higher Education shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The Director of Higher Education shall have training and experience in the field of higher education and shall be well qualified to serve as the Director of a State System of Higher Education as contemplated by this article. The Director of Higher Education shall be responsible to the Board and shall perform such duties and exercise such powers as shall be prescribed by the Board. Any institution aggrieved by any action of the Director of Higher Education shall, upon request, be afforded an opportunity to be heard by the Board with respect thereto. The Board shall, within the limits of funds provided by law, appoint such professional staff members as shall be sufficient to carry out the provisions of this article, whose salaries shall be fixed by the Governor subject to the approval of the Advisory Budget Commission, and such other necessary employees who shall be subject to the provisions of article 2, chapter 143 of the General Statutes. (1955, c. 1186, s. 10; 1957, c. 541, s. 21; 1965, c. 1096, s. 6.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, rewrote the former fifth sentence and made it the present last sentence, made

the former last sentence the present fifth sentence, and in such sentence deleted "or decision" formerly appearing between "action" and "of the Director."

ARTICLE 18A.

Contracts of Minors Borrowing for Higher Education.

§ 116-174.1. Minors authorized to borrow for higher education; interest; requirements of loans.—All minors in North Carolina of the age of 17 years and upwards shall have full power and authority to enter into written contracts of indebtedness with persons, North Carolina firms and corporations and to execute notes evidencing such indebtedness, which notes shall bear

interest, if any, at no greater than six per cent (6%) per annum. Such loans shall be:

- (1) Unsecured by the conveyance of any property as security, whether real, personal or mixed;
- (2) For the sole purpose of borrowing money to obtain a higher education at a North Carolina college, university, junior college, or industrial education center; provided, however, that none of the proceeds of any such loans shall be used to pay for any correspondence courses;
- (3) The proceeds of the loan shall be disbursed either directly to a college, university, junior college, or industrial education center for the benefit of the borrower, or jointly to the borrower and the college, university, junior college, or industrial center. (1963, c. 780.)

ARTICLE 19.

Revenue Bonds for Student Housing.

§ 116-175. Definitions.

- (1) The word "board" shall mean the board of trustees of any of the following: The University of North Carolina, Agricultural and Technical College of North Carolina, Appalachian State Teachers College, East Carolina College, Elizabeth City State College, Fayetteville State Teachers College, North Carolina College at Durham, Pembroke State College, Western Carolina College, and Winston-Salem State College, Asheville-Biltmore College, and Wilmington College.
- (3) The word "institution" shall mean each of the institutions enumerated in § 116-2 and § 116-45.

(1963, cc. 421, 422; c. 448, s. 20.1; c. 1158, ss. 1, 1½; 1965, c. 31, s. 3.)

Cross References.—As to revenue bonds for services and auxiliary facilities at the University of North Carolina, see §§ 116-41.1 to 116-41.12.

As to change of name of Winston-Salem Teachers College to Winston-Salem State College, see § 116-45 and note.

Editor's Note. — Pursuant to Session Laws 1963, c. 422, codified as § 116-45.1, "Elizabeth City State College" has been substituted for "Elizabeth City State Teachers College" in subdivision (1). Session Laws 1963, c. 448, s. 20.1, effective July 1, 1963, rewrote subdivision (3).

Session Laws 1963, c. 1158, s. 1, added "Asheville-Biltmore College, Charlotte College and Wilmington College" at the end of subdivision (1). Session Laws

1963, c. 1158, s. 1½, added the same words at the end of subdivision (3). However, subdivision (3) had been rewritten by Session Laws 1963, c. 448, s. 20.1, and as rewritten it includes the three colleges by referring to § 116-45, to which they were added by Session Laws 1963, c. 448, s. 21. Subdivision (3) is set out above as rewritten by Session Laws 1963, c. 448, s. 20.1.

The 1965 amendment, effective July 1, 1965, deleted "Charlotte College" following "Asheville-Biltmore College" in subdivision (1).

As only subdivisions (1) and (3) were changed by the amendments, the rest of the section is not set out.

§ 116-182. Refunding bonds.

Cross Reference.—As to refunding bonds issued under this article, see § 116-195.

ARTICLE 20.

Motor Vehicles of Students.

§ 116-186. **Registration and regulation of motor vehicles maintained and operated by students on campuses.**—The respective boards of trustees of the institutions enumerated in articles 1, 2, and 3 of chapter 116 of the General Statutes may adopt reasonable rules and regulations governing the registration

and operation on the campuses thereof of motor vehicles maintained and operated by students enrolled therein and may, in connection with such registration, charge a fee therefor not in excess of twenty-five dollars (\$25.00) annually, which fee shall be placed in a special fund at each institution, to be used by appropriate resolution of the board of trustees to develop, maintain, and supervise parking areas and facilities. No fee shall be charged on those motor vehicles operated by physically handicapped students. (1961, c. 1192; 1963, cc. 421, 422; 1965, c. 31, s. 3.)

Cross Reference.—As to change of name of Winston-Salem Teachers College to Winston-Salem State College, see § 116-45 and note.

Editor's Note.—The act inserting this article became effective July 1, 1961.

Pursuant to Session Laws 1963, c. 422,

codified as § 116-45.1, "Elizabeth City State College" was substituted for "Elizabeth City State Teachers College" in this section.

The 1965 amendment, effective July 1, 1965, rewrote the section, which formerly named the institutions.

ARTICLE 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

§ 116-187. **Purpose of article.**—The purpose of this article is to authorize the boards of trustees of the educational institutions designated herein to issue revenue bonds, payable from rentals, charges, fees (including student fees) and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or in part, of buildings and other facilities for the housing, health, welfare, recreation and convenience of students enrolled at said institutions. (1963, c. 847, s. 1.)

§ 116-188. **Credit and taxing power of State not pledged; statement on face of bonds.**—Revenue bonds issued as in this article provided shall not be deemed to constitute a debt or liability of the State or any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State nor the board (herein mentioned) shall be obligated to pay the same or the interest thereon except from revenues as herein defined and that neither the faith and credit nor the taxing power of the State or of any political subdivision or instrumentality thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds hereunder shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any taxes whatsoever therefor. (1963, c. 847, s. 2.)

§ 116-189. **Definitions.**—As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- (1) The word "board" shall mean the board of trustees of any of the following: The University of North Carolina, Agricultural and Technical College of North Carolina, Appalachian State Teachers College, Asheville-Biltmore College, East Carolina College, Elizabeth City State College, Fayetteville State College, North Carolina College at Durham, Pembroke State College, Western Carolina College, Wilmington College, and Winston-Salem State College, or such above-referred to institution regardless of whatever name it may be called, or any additional State-supported institutions of higher learning that may be provided by the General Assembly of North Carolina or, if any such board shall be abolished, the board, body, commission, department or

- officer succeeding to the principal functions thereof or to whom the powers vested under this article in the board shall be given by law.
- (2) The word "cost," as applied to any project, shall include the cost of acquisition or construction, the cost of acquisition of all property, both real and personal, or interests therein, the cost of demolishing, removing or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all labor, materials, equipment and furnishings, financing charges, interest prior to and during construction and, if deemed advisable by the board, for a period not exceeding one (1) year after completion of such construction, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project, and such other expenses as may be necessary or incident to the acquisition or construction of the project, the financing of such acquisition or construction, and the placing of the project in operation. Any obligation or expense incurred by the board prior to the issuance of bonds under the provisions of this article in connection with any of the foregoing items of cost may be regarded as a part of such cost.
- (3) The word "institution" shall mean each of the institutions enumerated in § 116-2 and § 116-45.
- (4) The term "existing facilities" shall mean buildings and facilities then existing any part of the revenues of which are pledged under the provisions of any resolution authorizing the issuance of revenue bonds hereunder to the payment of such bonds.
- (5) The word "project" shall mean and shall include any one or more buildings or facilities for student housing, student activities, physical education or recreation of any size or type approved by the board and the Advisory Budget Commission and any enlargements, improvements or additions so approved of or to any such buildings or facilities now or hereafter existing, including, but without limiting the generality thereof, dormitories and other student housing, dining facilities, student centers, gymnasiums, field houses and other physical education and recreation buildings, structures and facilities, and necessary land and interests in land, furnishings, equipment and parking facilities. Any project comprising a building or buildings for student activities or any enlargement or improvement thereof or addition thereto may include, without limiting the generality thereof, facilities for student services such as lounges, rest rooms, lockers, offices, stores for books and supplies, snack bars, cafeterias, restaurants, laundries, cleaning, postal, banking and similar student services, offices, rooms and other facilities for guests and visitors and facilities for meetings and for recreational, cultural and entertainment activities.
- (6) The word "revenues" shall mean all or any part of the rents, charges, fees (including student fees) and other income revenues derived from or in connection with any project or projects and existing facilities, and may include receipts and other income derived from athletic games and public events. (1963, c. 847, s. 3; 1965, c. 31, s. 3.)

Editor's Note. — The 1965 amendment, effective July 1, 1965, deleted "Charlotte College" following "Asheville-Biltmore College" in subdivision (1) and rewrote subdivision (3), which formerly named the institutions.

§ 116-190. General powers of board of trustees.—The board is authorized, subject to the requirements of this article:

- (1) To determine the location and character of any project or projects and to acquire, construct and provide the same and to maintain, repair and operate and enter into contracts for the management, lease, use or operation of all or any portion of any project or projects and any existing facilities;
- (2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the same;
- (3) To fix and revise from time to time and charge and collect (i) student fees from students enrolled at the institution operated by the board, (ii) rates, fees, rents and charges for the use of and for the services furnished by all or any portion of any project or projects and (iii) admission fees for athletic games and other public events;
- (4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, including parietal rules, when deemed desirable by the board, to provide for the maximum use of any project or projects and any existing facilities;
- (5) To acquire, hold, lease and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities for such period or periods of years, not exceeding forty (40) years, upon such terms and conditions as the board determines subject to the provisions of G. S. 143-341;
- (6) To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgment in connection with any project or projects and existing facilities, and to fix their compensation;
- (7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;
- (8) To receive and accept from any federal, State or other public agency and any private agency, person or other entity donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided; and
- (9) To do all acts and things necessary or convenient to carry out the powers granted by this article. (1963, c. 847, s. 4.)

§ 116-191. Issuance of bonds.—The board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the board for the purpose of paying all or any part of the cost of acquiring, constructing or providing any project or projects. The bonds of each issue shall be dated, shall mature at such time or times not exceeding fifty (50) years from their date or dates, shall bear interest at such rate or rates not exceeding five per centum (5%) per annum, as may be determined by the board, and may be redeemable before maturity, at the option of the board, at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form and manner of execution of the bonds, includ-

ing any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this article or any recitals in any bonds issued under the provisions of this article, all such bonds shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. The bonds may be issued in coupon or registered form or both, as the board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the board, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than five per centum (5%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, bonds may be issued under this article and other powers vested in the board under this article may be exercised by the board without obtaining the consent of any department, division, commission, board, bureau or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article. (1963, c. 847, s. 5.)

§ 116-192. Trust agreement; money received deemed trust funds; insurance; remedies.—In the discretion of the board and subject to the approval of the Advisory Budget Commission, any revenue bonds issued under this article may be secured by a trust agreement by and between the board and a cor-

porate trustee (or trustees) which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received, but shall not convey or mortgage any project or projects or any existing facilities or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the holders of such bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the acquisition, construction or provision of any project or projects, the maintenance, repair, operation and insurance of any project or projects and any existing facilities, student fees and admission fees and charges and other fees, rents and charges to be fixed and collected, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the board. Any such trust agreement or resolution may set forth the rights and remedies of the holders of the bonds and the rights, remedies and immunities of the trustee or trustees, if any, and may restrict the individual right of action by such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the board may deem reasonable and proper for the security of such holders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the project or projects for which such bonds are issued or as an expense of operation of such project or projects, as the case may be.

All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article. The board may provide for the payment of the proceeds of the sale of the bonds and the revenues, or part thereof, to such officer, board or depositary as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. Any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such requirements as are provided in this article and in the resolution or trust agreement authorizing or securing such bonds.

Notwithstanding the provisions of any other law the board may carry insurance on any project or projects and any existing facilities in such amounts and covering such risks as it may deem advisable.

Any holder of bonds issued under this article or of any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, and may enforce and compel the performance of all duties required by this article or by such trust agreement or resolution to be performed by the board or by any officer thereof, including the fixing, charging and collecting of fees, rents and charges. (1963, c. 847, s. 6.)

§ 116-193. Fixing fees, rents and charges; sinking fund.—For the purpose of aiding in the acquisition, construction or provision of any project and the maintenance, repair and operation of any project or any existing facilities, the board is authorized to fix, revise from time to time, charge and collect from students enrolled at the institution under its jurisdiction such student fee or fees for such privileges and services and in such amount or amounts as the board shall determine, and to fix, revise from time to time, charge and collect other fees,

rents and charges for the use of and for the services furnished or to be furnished by any project or projects and any existing facilities, or any portion thereof, and admission fees for athletic games and other public events, and to contract with any person, partnership, association or corporation for the lease, use, occupancy or operation of, or for concessions in, any project or projects and any existing facilities, or any part thereof, and to fix the terms, conditions, fees, rents and charges for any such lease, use, occupancy, operation or concession. So long as bonds issued hereunder and payable therefrom are outstanding, such fees, rents and charges shall be so fixed and adjusted, with relation to other revenues available therefor, as to provide funds pursuant to the requirements of the resolution or trust agreement authorizing or securing such bonds at least sufficient with such other revenues, if any, (i) to pay the cost of maintaining, repairing and operating any project or projects and any existing facilities any part of the revenues of which are pledged to the payment of the bonds issued for such project or projects, (ii) to pay the principal of and the interest on such bonds as the same shall become due and payable, and (iii) to create and maintain reserves for such purposes. Such fees, rents and charges shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. A sufficient amount of the revenues, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor and for renewals, replacements, extensions, enlargements and improvements as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made, the fees, rents and charges and other revenues or other moneys so pledged and thereafter received by the board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the board. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust agreement securing the same. (1963, c. 847, s. 7.)

§ 116-194. Vesting powers in executive committee.—The board may authorize its executive committee to sell any bonds which the board has, with the approval of the Advisory Budget Commission, authorized to be issued under this article in such manner and under such limitations or conditions as the board shall prescribe and to perform such other functions under this article as the board shall determine. (1963, c. 847, s. 8.)

§ 116-195. Refunding bonds.—The board is hereby authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds or revenue refunding bonds issued by the board under chapter 1289 of the 1955 Session Laws of North Carolina or under §§ 116-175 to 116-185, inclusive, of the General Statutes of North Carolina or under this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The board is further authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time revenue refunding bonds for the combined purpose of (i) refunding any such revenue bonds or reve-

nue refunding bonds issued by the board under said chapter 1289 or under said §§ 116-175 to 116-185, inclusive, General Statutes, or under this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and (ii) paying all or any part of the cost of acquiring or constructing any additional projects or projects.

The issuance of such refunding bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the board with respect to the same, shall be governed by the foregoing provisions of this article insofar as the same may be applicable. (1963, c. 847, s. 9.)

§ 116-196. Exemption from taxation; bonds eligible for investment or deposit.—Any bonds issued under this article, including any of such bonds constituting a part of the surplus of any bank, trust company or other corporation, and the transfer of and the income from any such bonds (including any profit made on the sale thereof and all principal, interest and redemption premiums, if any) shall at all times be exempt from all taxes or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, which are levied or assessed by the State or by any county, political subdivision, agency or other instrumentality of the State. Bonds issued by the board under the provisions of this article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1963, c. 847, s. 10.)

§ 116-197. Article provides additional and alternative method.—This article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, including §§ 116-175 to 116-185, inclusive, of the General Statutes of North Carolina, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this article need not comply with the requirements of any other law applicable to the issuance of bonds. (1963, c. 847, s. 11.)

§ 116-198. Inconsistent laws declared inapplicable.—All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this article. (1963, c. 847, s. 12.)

ARTICLE 22.

Visiting Speakers at State Supported Institutions.

§ 116-199. Use of facilities for speaking purposes. — The board of trustees of each college or university which receives any state funds in support thereof, shall adopt and publish regulations governing the use of facilities of such college or university for speaking purposes by any person who:

- (1) Is a known member of the Communist Party;
- (2) Is known to advocate the overthrow of the Constitution of the United States or the State of North Carolina;
- (3) Has pleaded the Fifth Amendment of the Constitution of the United States in refusing to answer any question, with respect to Com-

unist or subversive connections, or activities, before any duly constituted legislative committee, any judicial tribunal, or any executive or administrative board of the United States or any state. (1963, c. 1207, s. 1; 1965, Ex. Sess., c. 1, s. 1.)

Editor's Note. — For comment on the barring of speakers from State educational institutions, see 42 N.C.L. Rev. 179 (1963).

The 1965 amendment rewrote the first paragraph.

§ 116-200. Enforcement of article.—Any such regulations shall be enforced by the board of trustees, or other governing authority, of such college or university, or by such administrative personnel as may be appointed therefor by the board of trustees or other governing authority of such college or university. (1963, c. 1207, s. 2; 1965, Ex. Sess., c. 1, s. 2.)

Editor's Note. — The 1965 amendment substituted "Any such regulations" for "This article" at the beginning of the section.

Section 3 of the 1965 act provides that

neither the act nor the provisions of this article as it appeared prior to the 1965 act should repeal or be construed to repeal any provision of article 4 of chapter 14 of the General Statutes (§§ 14-11 to 14-12.1).

ARTICLE 23.

State Education Assistance Authority.

§ 116-201. Definitions.—As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- (1) The words "act" or "undertaking" shall mean the official act of the Authority in connection with the acquisition or disposition of all or any part of obligations or interest therein which the Authority is authorized to buy or sell under G.S. 116-202.
- (2) The word "Authority" shall mean the State Education Assistance Authority created by this article, or if the Authority shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof or on whom the powers given by this article to the Authority shall be conferred by law.
- (3) The word "obligations" shall mean those evidences of debt which the Authority may buy, sell, endorse or guarantee under the provisions of this article. (1965, c. 1180, s. 1.)

§ 116-202. Authority may buy and sell students' obligations; undertakings of Authority limited to revenues.—In order to facilitate the college education of residents of this State and promote the industrial and economic development of the State, the State Education Assistance Authority (hereinafter created) is hereby authorized and empowered to buy and sell obligations of students at institutions of higher education representing loans made to such students for the purpose of obtaining an education.

No act or undertaking of the Authority shall be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds of the Authority. All such acts and undertakings shall contain on the face thereof a statement to the effect that neither the State nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the Authority and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such acts and undertakings.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the provisions of this article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this article. (1965, c. 1180, s. 1.)

§ 116-203. Authority created as subdivision of State; appointment, terms and removal of board of directors; officers; quorum; expenses and compensation of directors.—There is hereby created and constituted a political subdivision of the State to be known as the "State Education Assistance Authority." The exercise by the Authority of the powers conferred by this article shall be deemed and held to be the performance of an essential governmental function.

The Authority shall be governed by a board of directors consisting of seven members, each of whom shall be appointed by the Governor. Two of the first members of the board appointed by the Governor shall be appointed for terms of one year, two for terms of two years, two for terms of three years, and one for a term of four years from the date of their appointment; and thereafter the members of the board shall be appointed for terms of four years. Vacancies in the membership of the board shall be filled by appointment of the Governor for the unexpired portion of the term. Members of the board shall be subject to removal from office in like manner as are State, county, town and district officers. Immediately after such appointment, the directors shall enter upon the performance of their duties. The board shall annually elect one of its members as chairman and another as vice-chairman, and shall also elect annually a secretary, or a secretary-treasurer, who may or may not be a member of the board. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the board. In the absence of both the chairman and vice-chairman, the board shall appoint a chairman pro tempore, who shall preside at such meetings. Four directors shall constitute a quorum for the transaction of the business of the Authority, and no vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority. The members of the board shall be entitled to reimbursement for their expenses incurred in attendance upon the meetings of the board or while otherwise engaged in the discharge of their duties. Each member of the board shall also be paid the sum of twenty-five dollars (\$25.00) per day for each day or portion thereof during which he is engaged in the performance of his duties. Such expenses and compensation shall be paid out of the treasury of the Authority upon vouchers signed by the chairman of the board or by such other person or persons as may be designated by the board for the purpose. (1965, c. 1180, s. 1.)

§ 116-204. Powers of Authority.—The Authority is hereby authorized and empowered:

- (1) To fix and revise from time to time and charge and collect fees for its acts and undertakings;
- (2) To establish rules and regulations concerning its acts and undertakings;
- (3) To acquire, hold and dispose of personal property in the exercise of its powers and the performance of its duties;
- (4) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;
- (5) To employ, in its discretion, consultants, attorneys, accountants, and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgment, and to fix their compensation to be payable from funds made available to the Authority by law;
- (6) To receive and accept from any federal or private agency, corporation, association or person grants to be expended in accomplishing the objectives of the Authority, and to receive and accept from the State, from any municipality, county or other political subdivision thereof and from any other source aid or contributions of either money, property, or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;
- (7) To sue and to be sued; to have a seal and to alter the same at its pleasure; and to make and from time to time amend and repeal bylaws,

rules and regulations not inconsistent with law to carry into effect the powers and purposes of the Authority;

- (8) To do all other acts and things necessary or convenient to carry out the powers expressly granted in this article; provided, however, that nothing in this article shall be construed to empower the Authority to engage in the business of banking or insurance. (1965, c. 1180, s. 1.)

§ 116-205. Title to property; use of State lands; offices.—(a) Title to any property acquired by the Authority shall be taken in the name of the Authority.

(b) The State hereby consents, subject to the approval of the Governor and Council of State, to the use of any other lands or property owned by the State, which are deemed by the Authority to be necessary for its purposes.

(c) The Authority may establish such offices in state-owned or rented structures as it deems appropriate for its purposes. (1965, c. 1180, s. 1.)

§ 116-206. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.—With the funds available to the Authority, for purposes other than the payment of personnel and the lease or rental of offices or equipment, the Authority may acquire from any bank or other lending institution of this State a contingent interest not exceeding eighty per cent (80%) of any individual obligation; the total contingent interest of the Authority on all such obligations shall not exceed at any one time a sum equal to twelve and one-half times the total funds which the Authority can employ to acquire such contingent interests. When the Authority acquires any such contingent interest, it may require the payment to it of a portion of the interest payable upon any such obligation. In each such acquisition, the Authority shall provide that at such time as the obligation becomes delinquent, the bank or other lending institution shall notify the Authority forthwith, and shall transfer forthwith to the Authority, by assignment or otherwise, an interest in such obligation equal to the contingent interest of the Authority therein. The bank or other lending institution and the Authority shall forthwith take such steps as may be necessary to recover the balance due upon any such obligation; any such recovery shall be apportioned between the Authority and the bank or other lending institution as their respective interests may appear. (1965, c. 1180, s. 1.)

§ 116-207. Terms of acquisitions.—The Authority shall prescribe the terms, conditions and limitations upon which it will acquire a contingent or direct interest in any obligation and such terms, conditions and limitations shall include, but without limiting the generality hereof, the interest rate payable upon such obligations, the maturities thereof, the terms for payment of principal and interest, applicable life or other insurance which may be required in connection with any such obligation and who shall pay the premiums thereon, the safekeeping of assets pledged to secure any such undertaking, and any and all matters in connection with the foregoing as will protect the assets of the Authority. (1965, c. 1180, s. 1.)

§ 116-208. Construction of article.—The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effectuated. (1965, c. 1180, s. 1.)

§ 116-209. Trust fund established; use and investment of fund; duties of State Treasurer.—The appropriation made to the Authority under this article shall be used exclusively for the purpose of acquiring contingent or vested rights in obligations which it may acquire under this article; such appropriations, payments, revenue and interest as well as other income received in connection with such obligations is hereby established as a trust fund. Such fund shall be used for the purposes of the Authority other than maintenance and operation.

The maintenance and operating expenses of the Authority shall be paid from

funds specifically appropriated for such purposes. No part of the trust fund established under this section shall be expended for such purposes.

The Authority shall be the trustee of the trust fund hereby created and shall have full power to invest and reinvest such funds, subject to the limitation that no investment shall be made, except upon the exercise of bona fide discretion, in securities which, at the time of making the investment, are, by statute, permitted for the investment of reserves of domestic life insurance companies. Subject to such limitation, the Authority shall have full power to hold, purchase, sell, assign, transfer or dispose of, any of the securities or investments in which any of the funds created herein have been invested, as well as of the proceeds of such investments and any moneys belonging to such funds.

In lieu of exercising all of the powers hereunder with respect to the investment and reinvestment of the several funds, the Authority may delegate such powers to the State Treasurer, in which event the State Treasurer shall exercise the investment powers as prescribed herein.

The State Treasurer shall be the custodian of the assets of the Authority. All payments from the accounts thereof shall be made by him issued upon vouchers signed by such persons as are designated by the Authority. A duly attested copy of a resolution of the Authority designating such persons and bearing on its face the specimen signatures of such persons shall be filed with the State Treasurer as his authority for issuing warrants upon such vouchers. (1965, c. 1180, s. 1.)

Editor's Note. — The appropriation referred to in this section is authorized to be made from the Contingency and Emergency Fund by s. 2 of the act adding this article.

ARTICLE 24.

Learning Institute of North Carolina.

§ 116-210. State agencies and institutions may contract with Learning Institute; audits. — The various agencies and institutions of the State of North Carolina are hereby empowered and authorized to enter into contracts and agreements with the Learning Institute of North Carolina, not inconsistent with its charter and the laws of the State of North Carolina. All funds involved shall be subject to audit by the State Auditor. (1965, c. 1174, s. 1.)

§ 116-211. Contracts for operation of Advancement School authorized.—The State Board of Education is hereby empowered and authorized to enter into a contract or contracts with the Learning Institute of North Carolina for the operation of the Advancement School at Winston-Salem, North Carolina. (1965 c. 1174, s. 2.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 1, 1965

I, Thomas Wade Bruton, Attorney General of North Carolina, do hereby certify that the foregoing 1965 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

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Attorney General of North Carolina

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